

021
No. 2785

United States Circuit Court of Appeals

NINTH CIRCUIT

O. E. GERNERT,

Plaintiff in Error,

VS.

THE UNITED STATES OF AMERICA,

Defendant in Error.

In Error to the District Court of
the United States

For the District of Oregon

Filed

APR 23 1916

F. D. Mousleton,

Clerk

No. _____

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INDEX

	Page
Arraignment of O. E. Gernert, Record of,	100
Arrest of Judgment, Motion in,	332
Arrest of Judgment, Order denying motion in, . . .	335
Assignment of Errors,	337
Bill of Exceptions,	104
Government's Exhibit 17,	129
27,	131
42,	133
43,	136
44,	137
51,	138
52,	141
54,	142
66,	107
129,	195
129 B,	196
139,	191
146,	191
146 E,	192
166,	195
174,	195
176,	192
182,	194
187,	194
188,	193
243,	154
244,	155
245,	157

INDEX—Continued

BILL OF EXCEPTIONS (Continued).	Page
Government Exhibit 288,	173
289,	175
290,	166
291,	170
292,	168
293,	197-198
294,	177
295,	180
297,	225
440,	185
Defendant's Exhibit T,	204
U,	207
V,	223
W,	229
Instructions to jury,	286
Instructions to jury requested by defendant,	279
List of Government's Exhibits,	260
List of Defendant's Exhibits,	268
Motion for directed verdict,	277
Motion for new trial,	330
Motion in arrest of judgment,	332
Order denying motion for directed verdict, ..	279
Order denying motion for new trial and motion in arrest of judgment,	335
Testimony of C. B. Clark,	149
Cross Examination,	158
W. A. Decker,	220
Cross Examination,	221

INDEX—Continued.

BILL OF EXCEPTIONS (Continued)	Page
Testimony of Hiram S. House,.....	164
Recalled,	213-219
	226, 239
Cross Examination,.....	213-228
Mrs. Ollie B. Howard,.....	228
Cross Examination,	229
Frank Menefee,.....	269
Myrtle Meadows,.....	196
G. H. Moore,.....	216
Cross Examination,	218
Redirect Examination,.....	219
Recross Examination,.....	219
N. C. Oviatt,.....	240
Cross Examination,	251
Lew Paramore,.....	201
Cross Examination,	203
Redirect Examination,.....	213
C. F. L. Smith,.....	231
Elmer C. Townsend,.....	239
Harry Wainwright,.....	232
Cross Examination,.....	238
C. R. Zener.....	224
John W. Zufall,.....	214
Bill of Exceptions, Order allowing time to submit,.	103
Bill of Exceptions, Certificate settling,	335
Bond on Writ of Error,	376
Certificate settling bill of exceptions,	335
Certificate to transcript,	379
Citation on Writ of Error,	I

INDEX—Continued.

	Page
Directed verdict, Motion for,	277
Directed verdict, Order denying motion for,	279
Exhibits (see Bill of Exceptions).	
Indictment,	4
Instructions to jury,	286
Instructions to jury requested by defendant,	279
Judgment, Motion in arrest of,	332
Judgment, Order denying motion in arrest of,	335
Motion in arrest of judgment,	332
Motion in arrest of judgment, Order denying,	335
Motion for directed verdict,	277
Motion for directed verdict, Order denying,	279
Motion for new trial,	330
Motion for new trial, Order denying,	335
Order allowing Writ of Error,	374
Order allowing time to submit Bill of Exceptions, .	103
Order denying motion for directed verdict,	279
Order denying motions for new trial and in arrest of judgment,	335
Order staying execution of sentence,	103
Petition for Writ of Error,	336
Plea of O. E. Gernert, Record of,	100
Praeipie for transcript,	378
Record of arraignment and plea of O. E. Gernert, .	100
Record of sentence,	103
Record of verdict,	100
Sentence, Order staying execution of,	103
Sentence, Record of,	103
Transcript of record, Praeipie for,	378

INDEX—Continued.

	Page
Transcript of record, Certificate to,	379
Verdict,	102
Verdict, Motion for directed,	277
Verdict, Order denying motion for directed,	279
Verdict, Record of,	100
Writ of Error,	2
Writ of Error, Bond on,	376
Writ of Error, Citation on,	1
Writ of Error, Order allowing,	374
Writ of Error, Petition for,	336

*United States Circuit Court of Appeals for the
Ninth Circuit.*

O. E. GERNERT,

Plaintiff in Error,

vs.

THE UNITED STATES OF AMERICA,

Defendant in Error.

NAMES AND ADDRESSES OF THE
ATTORNEYS OF RECORD:

Mr. Robert F. Maguire,

Corbett Building, Portland, Oregon,

For the Plaintiff in Error.

Mr. Clarence L. Reames,

United States Attorney, Post Office Building,

Portland, Oregon,

For the Defendant in Error.

CITATION ON WRIT OF ERROR.

United States of America,—ss.

The President of the United States of America, to the United States of America, and to Clarence L. Reames, United States Attorney for the District of Oregon.

Greeting:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the City of San Francisco, in the State of California, within thirty (30) days from the date hereof, pursuant to a writ of error duly issued and now on file in the clerk's office of the United States District Court for the District of Oregon, wherein O. E. Gernert is plaintiff in error, and the United States of America is defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS the Honorable EDWARD DOUGLASS WHITE, Chief Justice of the United States, this 29th day of March, in the year of our Lord one thousand nine hundred and sixteen.

R. S. Bean,
United States District Judge.

Filed March 29, 1916.

G. H. Marsh, Clerk.

*In the United States Circuit Court of Appeals for the
Ninth Circuit.*

United States of America,

Plaintiff,

vs.

O. E. Gernert,

Defendant.

WRIT OF ERROR.

United States of America,—ss.

The President of the United States of America, to the
Honorable, the Judge of the District Court of the
United States for the District of Oregon.

Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court, before the Honorable Robert S. Bean, United States District Judge, between the United States of America, plaintiff and defendant in error, and O. E. Gernert, defendant and plaintiff in error, a manifest error hath happened to the great damage of said plaintiff in error as by his complaint appears:

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same,

to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at the city of San Francisco, in the State of California, within thirty days from the date hereof, in the said Circuit Court of Appeals, to be then and there held, that the record and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

WITNESS, the Honorable EDWARD DOUGLASS WHITE, Chief Justice of the United States, this 3rd day of April, in the year of our Lord, one thousand nine hundred and sixteen.

(Seal)

G. H. Marsh,

Clerk, U. S. District Court for the District of Oregon.

By F. L. Buck, Deputy.

Service of the above Writ of Error made this 3rd day of April, in the year of our Lord, one thousand nine hundred and sixteen, upon the District Court of the United States, for the District of Oregon, by filing with me as Clerk of said Court, a duly certified copy of said Writ of Error.

G. H. Marsh,

Clerk of the District Court of the United States for the District of Oregon.

By F. L. Buck, Deputy.

Filed April 3, 1916.

G. H. Marsh, Clerk.

*In the District Court of the United States for the
District of Oregon.*

November Term, 1914.

BE IT REMEMBERED, That on the 27th day of February, 1915, there was duly filed in the District Court of the United States for the District of Oregon, an Indictment in words and figures as follows, to-wit:

INDICTMENT.

*In the District Court of the United States for the
District of Oregon.*

United States of America,

vs.

Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E.
Gernert, B. F. Bonnewell, H. M. Todd, Joseph
Hunter, O. L. Hopson, P. E. Muraine, and Oscar
A. Campbell,

Defendants.

INDICTMENT for Violation of Section 37 of the
Penal Code.

United States of America,

State and District of Oregon,—ss.

The Grand Jurors of the United States of America for the District of Oregon, duly impaneled, sworn and charged to inquire in, of and concerning the commission of crime within and for said district, upon their oaths and affirmations do allege, present, find and charge:

That at and during all of the times and dates in this indictment mentioned, stated, designated and specified, United States Cashier Company has been and now is a corporation organized and existing under and by virtue of the laws of the State of Oregon with its principal office and place of business in the City of Portland, in the County of Multnomah and within the State and District of Oregon aforesaid.

That at all of the times between the 1st day of September, 1910, and the 31st day of January, 1914, the defendant herein, Frank Menefee, was a duly elected, qualified and acting director of said corporation; that at and during all of the times between the 1st day of September, 1910, and the 31st day of January, 1914, he, the said defendant, Frank Menefee, was the duly elected, qualified and acting President of said corporation; that at and during all of the times between the 28th day of September, 1910, and the 31st day of January, 1914, he, the said defendant, Frank Menefee, was the duly elected, qualified and acting General Manager of said corporation.

That at and during all of the times and dates between the 1st day of September, 1910, and the 1st day of November, 1912, the above named defendant, F. M. LeMonn, was the duly elected, qualified and acting sales manager of said corporation.

That at and during all of the times and dates between the 1st day of January, 1911, and the 1st day of April, 1912, the defendant, O. E. Gernert, was an agent

and salesman for said corporation, and the duly appointed, qualified and acting assistant sales manager of said corporation.

That at and during all of the times and dates between the 15th day of April, 1911, and the 31st day of January, 1914, the defendant, B. F. Bonnewell, was the duly elected, qualified and acting fiscal agent for the said corporation, and an agent and salesman for said corporation.

That at and during all of the times and dates between the 15th day of April, 1911, and the 1st day of December, 1913, the defendant, H. M. Todd, was a duly appointed, qualified and acting sales agent for said corporation.

That at and during all of the times and dates between the 26th day of May, 1911, and the 31st day of January, 1914, the defendant, Joseph Hunter, was a duly appointed, qualified and acting sales agent for said corporation.

That at and during all of the times and dates between the 23rd day of November, 1910, and the 1st day of July, 1913, the defendant, O. L. Hopson, was a duly appointed, qualified and acting sales agent for said corporation.

That at and during all of the times and dates between the 6th day of March, 1911, and the 31st day of January, 1914, the defendant, P. E. Muraine, was a duly appointed, qualified and acting sales agent for said corporation.

That at and during all of the times and dates between the 12th day of June, 1911, and the 31st day of January, 1914, the defendant, Oscar A. Campbell, was a duly elected, qualified and acting director of said corporation; that at and during all of the times and dates between the 30th day of January, 1912 and the 31st day of January, 1914, he, the said defendant, Oscar A. Campbell, was the duly elected, qualified and acting vice-president of said corporation.

That at and during all of the times and dates between the 9th day of June, 1913, and the 31st day of January, 1914, the defendant, Thomas Bilyeu, was a duly elected, qualified and acting director of said corporation.

That at and during all of the times and dates between the 1st day of September, 1910, and the 31st day of January, 1914, the capital stock of said corporation amounted to the sum of One million two hundred thousand dollars divided and segregated by the Articles of Incorporation of said corporation into One hundred twenty thousand shares of the par value as fixed and stated in said Articles of Incorporation of Ten Dollars for each and every of said shares.

That at the City of Portland within the County of Multnomah and within the State and District of Oregon, and on or about the 1st day of September, 1910 (the exact date being to the Grand Jurors unknown), the defendants herein, Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M.

Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine, and Oscar A. Campbell, did then and there unlawfully, wilfully and feloniously conspire, confederate and agree together, and with divers other persons to the Grand Jurors unknown, to commit the acts made offenses and crimes by the laws of the United States to prevent the use of the United States mails to promote fraud to-wit: Section Two Hundred Fifteen of the Criminal Code of the United States; that is to say: the said defendants Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine and Oscar A. Campbell, did then and there unlawfully, wilfully and feloniously conspire, combine, confederate and agree together, and with divers other persons to the Grand Jurors unknown, to devise and execute a scheme and artifice to defraud to be effected by means of the Postoffice establishment of the United States, and to obtain money and property by means of false and fraudulent representations, pretenses and promises from Harry Wainwright, John Marshall, C. F. L. Smith, Francis Gzella, A. A. Milliken, J. W. Zufall, Harry I. Carruthers, R. O. Holmes, John Straub, T. W. Harris, L. H. Robinson, J. C. Flaherty, O. K. Clarke, E. W. Draper, James Hansen, W. B. Morse, E. D. Paine, R. L. Anderson, E. A. Mulkey, C. A. McMahon, R. L. Robison, E. O. Tobey, S. M. Sim, J. W. Brett, Bert Sallaberry, H. J. Johnson, G. A. Frees, Ole G. Vinger, Herman A. C. Ludecke, William Herzog, Forbes Weisman, Henry W. Axford, T. Warsop Cooper, Annabelle McRay, Charles E. Hatfield, Matilda O. Johnson, Conrad

Stafrin, John Meyers, J. H. Manis, A. L. Pierce, John Irrigoin, Fred Williams, H. J. Shannon, Emma G. Hedges, Mary E. Hall, W. H. Garl, Thomas T. Davies, M. C. Carlson, George F. Cobb, Edward Klein, W. T. Roberts, John H. Ballagh, J. J. Bauer, H. T. Johnson and A. M. Armstrong (the last named fifty-five persons being hereinafter in this indictment designated, termed and called "INVESTORS"), and from divers other persons to the Grand Jurors unknown, and the public generally, by inducing, inciting and procuring the said "INVESTORS" and divers other persons to the Grand Jury unknown, and the public generally, to open communication with the said defendants Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine and Oscar A. Campbell and with the said United States Cashier Company, a corporation, and by inducing, inciting and procuring the said "INVESTORS" and divers other persons to the Grand Jurors unknown, and the public generally, to purchase from the said defendants Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine and Oscar A. Campbell, and from said corporation, namely: United States Cashier Company, the shares of stock of said corporation, and to pay over, deliver and to transfer to the said defendants Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine and Oscar A. Campbell, and to the said corporation, namely: United States

Cashier Company, in exchange and payment for said shares of stock the money and property of the said "INVESTORS" and of divers other persons to the Grand Jurors unknown, the payment of said sums of money to the said defendants Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine and Oscar A. Campbell, and to the said corporation, namely: United States Cashier Company, and the transfer of said property to the said defendants Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine and Oscar A. Campbell, and to the said corporation, namely: United States Cashier Company, to be induced, incited and procured by the false and fraudulent representations of the said defendants Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine and Oscar A. Campbell, to be made to the said "INVESTORS" and to divers other persons to the Grand Jurors unknown by the said defendants Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine and Oscar A. Campbell.

That it was a part and portion of said unlawful, wilful and felonious conspiracy, so entered into by the said defendants, Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine

and Oscar A. Campbell, that said scheme and artifice to defraud the said "INVESTORS" and divers other persons to the Grand Jurors unknown, and the public generally, should be by the said defendants Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine, and Oscar A. Campbell, carried out, carried on and effected by the further means, methods, manner and plans, that is to say: the said defendants Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine and Oscar A. Campbell would cause, induce, incite and procure the said "INVESTORS" and many and divers other persons to the Grand Jurors unknown, and the public generally to pay over and to deliver to and to transfer to the said defendants Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine and Oscar A. Campbell, and to the said corporation in payment of and in exchange for the shares of stock of said corporation, United States Cashier Company, money and property of the value of more than the sum of One million dollars, which said payment of said money and which transfer of said property was to be by the said defendants Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine, and Oscar A. Campbell induced, incited, procured and obtained by the dishonest, fraudulent and false representations and promises hereinafter set forth, all

to be made to the said "INVESTORS" by the said defendants Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine and Oscar A. Campbell, and to divers other persons to the Grand Jurors unknown, and the public generally, and to swindle, cheat and defraud said "INVESTORS" and each, every and all thereof, and various and sundry other persons to the Grand Jurors unknown, and the public generally, out of all of the said sums of money and the said property that the said "INVESTORS" and various other persons to the Grand Jurors unknown and the public generally, should pay over and deliver to the said defendants Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine and Oscar A. Campbell, or either thereof, or to the said corporation, namely: United States Cashier Company.

That it was a part and portion of said unlawful, wilful and felonious conspiracy, so entered into by the said defendants Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine and Oscar A. Campbell, that said scheme and artifice to defraud the said "INVESTORS" and divers other persons to the Grand Jurors unknown, and the public generally, should be by the said defendants Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine and Oscar A. Campbell carried out, carried on and effected by the further means, methods,

manner and plans, that is to say: that for the purpose of inducing, inciting and procuring the said "INVESTORS" and various and divers other persons to the Grand Jurors unknown and the public generally, to purchase said shares of stock of said corporation and to pay over and to deliver to the said defendants Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine and Oscar A. Campbell, and to the said corporation, money and property in exchange and payment therefor, the said defendants Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine and Oscar A. Campbell, would falsely and fraudulently and by means of printed advertisements to be by the said defendants Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine and Oscar A. Campbell, inserted in newspapers, in pamphlets, in catalogues, in circulars and in letters, and to be written in letters, which said newspapers, pamphlets, catalogues, circulars and letters were to be by the said defendants transmitted and caused to be transmitted and sent by and through, and by means of the Postoffice establishment of the United States, to the said "INVESTORS" and to divers other persons to the Grand Jurors unknown, and by words to be orally spoken by the said defendants Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine, and Oscar A. Campbell,

represent, pretend and promise that the said corporation, namely: United States Cashier Company owned the patents to a certain "CHANGE COMPUTING MACHINE," a certain "BANK CASHIER MACHINE," a certain LIGHTNING CHANGE MAKER," a certain "CURRENCY PAYING MACHINE" and a certain "NEW STYLE ADDING MACHINE," and that the said corporation, namely: United States Cashier Company, was engaged in the business of manufacturing and selling said machines, and each, every and all thereof; that on account of the said alleged ownership of said patents and the said alleged manufacturing of said machines by said corporation, the said shares of stock of said corporation, namely: United States Cashier Company, were of great commercial value and that large dividends would be by said corporation declared and paid thereon to the said "INVESTORS" and to all other persons who should purchase the same from the said defendants Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine and Oscar A. Campbell, or from the said corporation, namely: United States Cashier Company; that said corporation, namely: United States Cashier Company would declare and pay to all of said "INVESTORS," and to divers other persons to the Grand Jurors unknown, and to all persons who should purchase the shares of stock from said corporation large and certain dividends upon said stock within six months from the date that any of said persons should purchase any of said shares of stock from said defendants Frank

Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine, and Oscar A. Campbell, or either thereof, or from said corporation, namely: United States Cashier Company; that the said corporation, namely: United States Cashier Company, was the owner and in the possession of large bona fide orders for the purchase of said machines and that on account of said orders for the said machines the said corporation would make a large and certain profit; that the financial condition of the said corporation, namely: United States Cashier Company, was excellent, and that the assets of said corporation, namely: United States Cashier Company, far exceed in value the total amount of the liabilities against and owned by said corporation, namely: United States Cashier Company; that a certain large amount of the capital stock of said corporation, namely: United States Cashier Company, the exact amount of the same being to the Grand Jurors unknown, which said stock would be offered for sale to the said "INVESTORS" and to divers other persons to the Grand Jurors unknown and the public generally, belonged to and was the property of the said corporation, namely: United States Cashier Company, and that the money derived from the sale thereof would be by said corporation invested and used in such a manner as to increase the assets of said corporation, namely: United States Cashier Company, and to make its shares of stock more valuable, and particularly for the purpose of purchasing and building factories in which to increase the manufacture of said ma-

chines; that inasmuch as the assets of said corporation, namely: United States Cashier Company, exceeded and was greater than the liabilities of said corporation, the said defendant Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine, and Oscar A. Campbell, were justified in raising and increasing the selling price of said shares of stock from the said par value of Ten Dollars each to a selling price of Eleven Dollars each; from a selling price of Eleven Dollars each to a selling price of Twelve Dollars and Fifty cents each; from a selling price of Twelve Dollars and Fifty cents each to a selling price of Fifteen Dollars each; from a selling price of Fifteen Dollars each to a selling price of Twenty Dollars each; from a selling price of Twenty Dollars each to a selling price of Thirty Dollars each; and from a selling price of Thirty Dollars each to a selling price of Fifty Dollars each.

Whereas, in truth and in fact and as the defendants Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine and Oscar A. Campbell, and each every and all thereof at and during and between all the times and dates mentioned, specified and stated in this indictment, then and there well knew, neither the said corporation, namely: United States Cashier Company, nor any of said defendants, Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine and Oscar A. Campbell, owned the patents to said certain "CHANGE COMPUTING

MACHINE," or said certain "LIGHTNING CHANGE MAKER," or said certain "CURRENCY PAYING MACHINE," or said certain "NEW STYLE ADDING MACHINE," or either thereof; and

Whereas, in truth and in fact and as the defendant Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine, and Oscar A. Campbell, and each, every and all thereof, at and during and between all the time and dates mentioned, specified and stated in this indictment, then and there well knew, the said corporation, namely: United States Cashier Company was not engaged in either the business of manufacturing or selling said machines, or any thereof, but on the contrary its business was to sell and dispose of the said shares of stock; and

Whereas, in truth and in fact and as the defendants Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine and Oscar A. Campbell, and each, every and all thereof at and during and between all the times and dates mentioned, specified and stated in this indictment then and there well knew, the said shares of stock and each, every and all thereof, were of very little value and of practically no value whatsoever, and said shares of stock and each, every and all thereof were practically worthless; and

Whereas, in truth and in fact and as the defendants Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine, and Oscar A. Campbell, and each, every and all thereof at and during and between all the times and dates mentioned, specified and stated in this indictment then and there well knew, no dividends whatsoever would ever be by said corporation, namely: United States Cashier Company, either declared or paid to the said "INVESTORS," or to any other person who should purchase the said shares of stock by either the said corporation, namely: United States Cashier Company, or by any of the said defendants, Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine, and Oscar A. Campbell; and

Whereas, in truth and in fact, and as the defendants Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine and Oscar A. Campbell, and each, every and all thereof at and during and between all the times and dates mentioned, specified and stated in this indictment then and there well knew, none of the said "INVESTORS," or any other person who should purchase said shares of stock, would ever receive, either from said corporation, namely: United States Cashier Company, or from said defendants Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hun-

ter, O. L. Hopson, P. E. Muraine, or Oscar A. Campbell, any dividend whatsoever; and

Whereas, in truth and in fact and as the defendants Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine, and Oscar A. Campbell, and each, every and all thereof at and during and between all the times and dates mentioned, specified and stated in this indictment then and there well knew, the said corporation, namely: United States Cashier Company, was neither the owner nor in the possession of the said alleged bona fide orders for the purchase of said machines; and

Whereas, in truth and in fact and as the defendants Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine and Oscar A. Campbell, and each, every and all thereof at and during and between all the times and dates mentioned, specified and stated in this indictment, then and there well knew, the financial condition of said corporation, namely: United States Cashier Company, was not excellent, but on the contrary at and during all of the times and dates mentioned, specified and stated in this indictment, and as the defendants Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine and Oscar A. Campbell, then and there well knew, the said corporation, namely: United States Cashier Company, was absolutely insolvent; and

Whereas, in truth and in fact, and as the defendants Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine and Oscar A. Campbell, and each, every and all thereof at and during and between all the times and dates mentioned, specified and stated in this indictment, then and there well knew, the value of the assets of said corporation, namely: United States Cashier Company, amounted to a sum much less than the total amount of the liabilities against and owed by said corporation, namely: United States Cashier Company; and

Whereas, in truth and in fact and as the defendants Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine and Oscar A. Campbell, and each, every and all thereof at and during and between all the times and dates mentioned, specified and stated in this indictment, a very large amount of the shares of stock of said corporation, namely: United States Cashier Company, which the said defendants Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine and Oscar A. Campbell were to in a manner and form as hereinbefore alleged represent as being the property of the said corporation, namely: United States Cashier Company, consisted of shares of stock owned by the said defendants Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph

Hunter, O. L. Hopson, P. E. Muraine, and Oscar A. Campbell, and all of the sums of money and all of the property received on account of the sale thereof would be appropriated by the said defendants Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine, and Oscar A. Campbell, and none of the same or any part thereof would be paid into the treasury of the said corporation, namely: United States Cashier Company, to be used by it, either for increasing the assets of said corporation, or otherwise; and

Whereas, in truth and in fact, and as the defendants Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine, and Oscar A. Campbell, and each, every and all thereof at and during and between all the times and dates mentioned, specified and stated in this indictment, then and there well knew, none of the said defendants, or any thereof, were at any time on account of the financial condition of said corporation justified in either raising or increasing the selling price of said shares of stock or any thereof; and

Whereas, in truth and in fact and as the defendants Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine and Oscar A. Campbell, and each, every and all thereof at and during and between all the times and dates mentioned, specified and states in this indictment, then and there well knew, each and every person who should purchase any of said shares

of stock from said defendants Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine and Oscar A. Campbell, or from said corporation, namely: United States Cashier Company, would suffer and sustain a loss on account of said transaction of all sums of money which any of said persons should pay over or deliver to said defendants Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine and Oscar A. Campbell, or to said corporation, namely: United States Cashier Company, in exchange or payment for said shares of stock.

That it was a further part and portion of said unlawful, wilful and felonious conspiracy so entered into by said defendants Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine and Oscar A. Campbell, that said scheme and artifice to defraud the said "INVESTORS" and divers other persons to the Grand Jurors unknown, and the public generally, should be by the said defendants Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine and Oscar A. Campbell, carried out, carried on and effected by the further means, methods, manner and plan, that is to say: that for the purpose of inducing, inciting and procuring the said "INVESTORS" and divers other persons to the Grand Jurors unknown, and the public generally, to purchase

said shares of stock from said corporation and from said defendants Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine, and Oscar A. Campbell and to pay over and deliver to the said defendants Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine and Oscar A. Campbell, and to the said corporation, money and property in exchange and in payment therefor, the said defendants Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine and Oscar A. Campbell would from time to time during the existence of said conspiracy, fraudulently and dishonestly publish and cause to be published, false and untrue written and printed statements of the assets of said corporation, and false and untrue written and printed statements of the liabilities owed by said corporation, and false and untrue written and printed statements of the financial condition of said corporation. That in said false and untrue statements of the assets of said corporation, and in each, every and all thereof, the assets of said corporation would be by the said defendants Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine, and Oscar A. Campbell, stated to be sums greatly in excess of the true value of all of the assets of said corporation; that in said false and untrue statements of the liabilities owed by said corporation, and in said false and untrue statements of

the financial condition of said corporation and in each, every and all thereof, there would be by the said defendants Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine, and Oscar A. Campbell, omitted therefrom liabilities owed by said corporation amounting to more than the sum of One half million dollars.

That it was a further part and portion of said wilful, unlawful and felonious conspiracy, so entered into by the said defendants Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine, and Oscar A. Campbell, that said scheme and artifice to defraud the said "INVESTORS" and divers other persons to the Grand Jurors unknown, and the public generally, should be carried out, carried on and effected by the said defendants Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine, and Oscar A. Campbell, selling said shares of stock to the said "INVESTORS" and to divers other persons to the Grand Jurors unknown, in the following states, namely: Oregon, Washington, California, Idaho, Montana, Wyoming, Utah, Texas, Iowa, North Dakota, Michigan, Illinois, Colorado, New York, and many and divers other states to the Grand Jurors unknown.

That it was a further part and portion of said unlawful, wilful and felonious conspiracy, so entered into by the said defendants Frank Menefee, F. M. LeMonn,

Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine, and Oscar A. Campbell, that the said defendants would so manage and control the business affairs of said corporation, namely: United States Cashier Company, to the end that more than twenty-five per cent of all of the sums of money which should be by the said "INVESTORS" and by divers others persons to the Grand Jurors unknown, and by the public generally, paid over, delivered and transferred to said corporation, namely: United States Cashier Company, and to said defendants Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine and Oscar A. Campbell, in exchange and payment for said shares of stock, would be appropriated by the said defendants Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine and Oscar A. Campbell to their own use and gain.

That it was a part and portion of said unlawful, wilful, and felonious conspiracy, so entered into by the said defendants Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine and Oscar A. Campbell, that said scheme and artifice to defraud the said "INVESTORS" and divers other persons to the Grand Jurors unknown, and the public generally, should be by the said defendants Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Ger-

nert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine and Oscar A. Campbell carried out, carried on and effected by the further means, methods, manner and plans, that is to say: that for the purpose of inducing, inciting and procuring the said "INVESTORS" and various and divers other persons to the Grand Jurors unknown, and the public generally, to purchase said shares of stock of said corporation and to pay over and to deliver to the said defendants Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine, and Oscar A. Campbell, and to the said corporation, namely: United States Cashier Company, money and property in exchange and payment therefor, the said defendants Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine and Oscar A. Campbell, would increase the selling price of said shares of stock from the said par value of Ten Dollars each to a selling price of Eleven Dollars each; from a selling price of Eleven Dollars each to a selling price of Twelve Dollars and Fifty cents each; from a selling price of Twelve Dollars and Fifty cents each to a selling price of Fifteen Dollars each; from a selling price of Fifteen Dollars each to a selling price of Twenty Dollars each; from a selling price of Twenty Dollars each to a selling price of Thirty Dollars each; and from a selling price of Thirty Dollars each to a selling price of Fifty Dollars each.

That it was a further part and portion of said unlawful, wilful and felonious conspiracy, so entered into

by the defendants Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine and Oscar A. Campbell, to execute the said scheme and artifice to defraud, and to attempt so to do by placing and causing to be placed in the Post Office of the United States, at Portland, in Multnomah County, Oregon, and causing to be delivered by the Post Office establishment of the United States, the said newspapers, pamphlets, catalogues, circulars and letters, and other letters to be written by the said defendants Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine and Oscar A. Campbell, which said letters would request the said "INVESTORS" and divers other persons to the Grand Jurors unknown, to remit and to pay to the said defendants Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine and Oscar A. Campbell, and to said corporation, namely: United States Cashier Company, money in payment and exchange for said shares of stock, all of said newspapers, pamphlets, catalogues, circulars, and letters, to be sent and delivered by the Postoffice establishment of the United States to the persons to whom addressed in pursuance of said conspiracy.

That it was a part and portion of said wilful, unlawful and felonious conspiracy so entered into by the said defendants Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M.

Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine and Oscar A. Campbell, that the said conspiracy, combination and agreement aforesaid should and would continue from the said 1st day of September, 1910, until and including the 1st day of January, 1915; that said conspiracy was to be a continuing conspiracy, and that it was to continue at all times between the 1st day of September, 1910, until and including the 1st day of January, 1915, and that at and during all of the times and dates, the said defendants Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine and Oscar A. Campbell would continue to be parties to said conspiracy and would continue to commit the said acts, and crimes hereinbefore set forth in detail.

That the said wilful, unlawful and felonious conspiracy, combination and agreement, aforesaid, so entered into by the said defendants Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine and Oscar A. Campbell, on or about the 1st day of September, 1910, continued from the date of said conspiracy until and including the 1st day of January, 1915; that at and during all of the times and dates between the said 1st day of September, 1910, and the 1st day of January, 1915, said wilful, unlawful and felonious conspiracy, combination and agreement was continually in existence and in operation, and at and during all of said times the said defendants Frank Menefee, F. M.

LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine and Oscar A. Campbell continued to wilfully, unlawfully and feloniously conspire, combine, confederate and agree together to commit the said crime hereinbefore set forth in detail.

1. And the Grand Jurors, aforesaid, upon their oaths and affirmations, aforesaid, do further present, allege, find and charge:

That in pursuance and furtherance of the said unlawful conspiracy, combination, confederation and agreement, aforesaid, and to effect the object thereof, the defendant herein, B. F. Bonnewell, did afterwards and on, to-wit: the 6th day of February, 1914, at Portland, Oregon, and within the jurisdiction of this Court, knowingly, unlawfully and feloniously place and deposit and cause to be placed and deposited in a postoffice and postal station of the United States postoffice establishment, to-wit: the United States Postoffice at Portland, Oregon, for mailing and delivery and with postage fully prepaid thereon, a certain sealed envelope then and there addressed to Mr. Bert Sallaberry at Elmdale, Montana, and at the time of the mailing of said sealed envelope, aforesaid, there was then and there enclosed in said envelope a certain letter which said letter was and is as follows, to-wit:

“Portland, Oregon,
Feb. 6th, 1914.

Mr. Bert Sallaberry,
Elmdale, Montana.

Dear Sir:

As per your agreement with me you were to send me Five Hundred dollars more to apply on your note before this date providing I extended One thousand dollars until shearing time in 1914. So send the above amt by return mail or I will have to turn the note over to an Attorney for Collection and that means a lot of costs.

Yours Resp.

B. F. Bonnewell.

1108 E. Flanders St., Portland, Oregon.”

which said letter had theretofore and on February 6, 1914, been written and executed by the said defendant B. F. Bonnewell; with the intent then and there in the said defendant B. F. Bonnewell, that the said letter contained in the said envelope and the said envelope should be sent, transmitted and delivered by and through the postoffice establishment of the United States to the said addressee at Elmdale, Montana; and which said letter was then and there of and concerning the afore-said scheme and artifice to defraud, which said scheme and artifice to defraud, the said defendants, Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine and Oscar A. Campbell,

had theretofore, as hereinabove alleged, conspired, combined and agreed to devise and to execute;

2. And the Grand Jurors, aforesaid, upon their oaths and affirmation, aforesaid, do further present, allege, find and charge:

That in pursuance and furtherance of the said unlawful conspiracy, combination, confederation and agreement, aforesaid, and to effect the object thereof, the defendant herein, Frank Menefee, did afterwards and on, to-wit, the 23rd day of July, 1912, at Portland, Oregon, and within the jurisdiction of this court, knowingly, unlawfully and feloniously place and deposit and cause to be placed and deposited in a postoffice and postal station of the United States postoffice establishment, to-wit: the United States postoffice at Portland, Oregon, for mailing and delivery and with postage fully prepaid thereon, a certain sealed envelope then and there addressed to Mr. E. Klein, at Everett Building, No. 4th Avenue & 17th St., New York, N. Y., and at the time of the mailing of said sealed envelope, aforesaid, there was then and there enclosed in said envelope a certain letter which said letter was and is as follows, to-wit:

"Frank Menefee,	Robert J. Upton,
Pres. and Gen. Mgr.	Secretary.
F. H. Gloyd	F. M. LeMonn,
Treasurer.	Gen. Sales Manager.

UNITED STATES CASHIER CO.

Manufacturers

Automatic Computing Change-making, Recording
Coin-paying Machines.

Automatic Cashier for	Visible Listing and
Banks, Pay Rolls, etc.	Adding Machine.

Automatic Change-computing Machine for De-
partment and Retail Stores, etc.

Home Office, Lewis Building.

Portland, Oregon,

July 23, 1912.

Mr. E. Klein,
Everett Building,
No. 4th Avenue & 17th St.,
New York, N. Y.

Dear Sir:

Your letter of the 18th instant is received and in answer will say that the writer had quite a talk with Mr. Levi when he was here in Portland and we showed him our factory and gave him such information as we could. He was quite busy with his duties at the Elks Convention and we were not able to show him around as extensively as we would liked to have done.

In regard to stock, Mr. Levi asked us to make a proposition with reference to terms, etc., but did not

indicate what kind of a proposition would be satisfactory to you. With reference to terms, I can furnish you with fifty shares of stock at the rate of \$15 per share as stated to you in our letter of June 21st, and also can arrange to cancel another subscription which was sold at \$15 and turn that over to you also. In both these cases the parties have been unable so far to meet their payments and one we are ready to cancel and the other we will cancel at once if we hear from you favorably and you wish to take it over. We probably would have to cancel it anyway.

As to terms, we would like to have you take this stock as nearly on a cash basis as possible for the reason that it is now while we are extensively engaged in manufacturing dies, having arranged with Sloan & Chace of Newark, N. J., for several thousand dollars worth to be made as fast as they can do the work, and also keeping up the work of die making and the work we can do on the manufacture of machines prior to getting all of our dies, that large demands are made on us for ready cash. Also at this season of the year, while of course an amount of this kind is not sufficient to cause any great or serious difference, we would like to keep our reserve fund up to as high a point as possible as collections, both personal and for the company, are much slower now than they will be later in the season after sixty or ninety days. However, we can allow you to pay one-half the amount down, being the amount we offered you in our June 21st letter, and will give you sixty to ninety days on the balance, you to give us

E. Klein—Page 2.

your note for the amount. We trust this arrangement will be satisfactory to you.

We recently sent you a report of the stockholders' meeting which I hope you received all right. We have been continuing our work stronger than ever since the annual meeting and since the report was written, and while of course it is a large and expensive undertaking, we are in such condition that we can see the daylight ahead both as to time and the financial support necessary to carry our undertaking to a successful termination. In fact, there is no question now confronting us which we will not be able to overcome without serious inconvenience and the getting of our machines on the market at an early date is absolutely assured.

We are also developing a Currency Paying Machine which we have to a point of demonstrating so that we know it will meet the approval of the commercial world, and this with our Computing Machine and the small Change Maker, which we are also getting ready for the market, will make a family of machines that cannot fail to give profitable returns to our investors.

Of course, at this time we are confining all of our effort so far as the manufacturing end is concerned, to the Bank Cashier machine as scattering our efforts in so many directions would result in unnecessary delay in getting to the market with our product.

However, the standardizing and developing of other models is being carried forward and now that the standardizing of our commercial Cashier is practically completed, another one of our machines will be taken up and placed in form for commercial manufacture. Our subsequent models, of course, can be handled much quicker and with less outlay than our first machine inasmuch as the standardizing of the Cashier alone works out the standardizing and development of something like eighty per cent of the other models.

Kindly let us hear from you as soon as possible so we will know whether you are going to take this stock.

Yours faithfully,

UNITED STATES CASHIER COMPANY,

FM-HG
Frank Menefee,
President."

which said letter had theretofore and on July 23, 1912, at Portland, Oregon, been written and executed by the said defendant, Frank Menefee, with the intent then and there in the said defendant, Frank Menefee, that the said letter contained in the said envelope and the said envelope should be sent, transmitted and delivered by and through the postoffice establishment of the United States to the said addressee at New York, New York; and which said letter was then and there of and concerning the aforesaid scheme and artifice to defraud, which said scheme and artifice to defraud, the said de-

fendants, Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine and Oscar Campbell, had theretofore, as hereinabove alleged, conspired, combined and agreed to devise and to execute;

3. And the Grand Jurors, aforesaid, upon their oaths and affirmations, aforesaid, do further present, allege, find and charge:

That in pursuance and furtherance of the said unlawful conspiracy, combination, confederation and agreement, aforesaid, and to effect the object thereof, the defendant herein, Frank Menefee, did afterwards, and on, to wit: the 7th day of June, 1912, at Portland, Oregon, and within the jurisdiction of this court, knowingly, unlawfully and feloniously, place and deposit and cause to be placed and deposited in a postoffice and postal station of the United States postoffice establishment, to wit: the United States postoffice at Portland, Oregon, for mailing and delivery and with postage fully prepaid thereon, a certain sealed envelope then and there addressed to Dr. A. A. Milliken, at Fort Jones, Calif., and at the time of the mailing of said sealed envelope, aforesaid, there was then and there enclosed in said envelope a certain letter which said letter was and is as follows, to wit:

"Frank Menefee,
Pres. and Gen. Mgr.

F. H. Gloyd,
Treasurer.

Robert J. Upton,
Secretary.

F. M. LeMonn,
Gen. Sales Manager.

UNITED STATES CASHIER CO.

Manufacturers

Automatic Computing, Change-Making, Recording
Coin-Paying Machines.

Automatic Cashier for Visible Listing and
Banks, Pay Rolls, etc. Adding Machine.

Automatic Change-Computing Machine for De-
partment and Retail Stores, etc.

Home Office Lewis Building.

Portland, Oregon,

June 7, 1912.

Dr. A. A. Milliken,
Fort Jones, Calif.

Dear Sir:

Replying to your letter received today and also confirming our wire will say that I will give you a statement of the patents and applications owned and controlled by this Company. You will notice we have designated them as case A, B, etc.: This for our convenience in reference to letters or telegrams to our attorneys in Washington. You will also notice that in Case A^o and Case B. patents have been issued. These are assigned on the records of Washington direct to this Company. Cases A., C. and D. are at this time allowable. In other words the claims have been granted by the department and

we have been duly notified to that effect and we can have the patents allowed and issued any time on payment of the final government fee of \$15 each. These cases we are holding unissued for reason that the life of the patents does not commence to run so long as they are unissued and we can also rewrite our claims, broadening them as the machine develops so as to strengthen it in every respect and finally have issued a patent much broader in its *skope*.

In other cases the applications are on file with perhaps one or two minor exceptions and have been regularly assigned, at the time application was filed, to this Company. To be absolutely explicit as to the ownership of the patents will say that the title to all of these patents and applications is in the United States Cashier Company; no contract existing that can in any manner forfeit them to any other person. Moreover, they are paid for in full at this time, with the exceptions of about \$25,000 on our Bilyeu contract, which is not yet due. Non-payment of the amount due would not effect the Company's title or right to the patents. We mention this to be explicit that no one has any claim upon our patents whatever, but of course the small balance unpaid will be

Dr. A. A. Milliken———#2.

readily taken care of and is not an embarrassing indebtedness against the Company at all.

The cases referred to are as follows

Case AO

This application has resulted in Letters Patent No. 886,307, issued to Thomas I. Potter, April 28, 1908, regularly assigned to the Company, and covers particularly a selective mechanism of the type using a selector plate or plates traversing the path of movement of the ejecting devices, and controlling the operativeness or inoperativeness of the same. The patent does not limit us to handle controlling means, as we are at liberty to employ key mechanism instead.

Case A.

This application is directed to the original Bilyeu invention and especially the arrangement of parts including the selector, ejector and actuator devices which are used in an analogous arrangement in our latest machine.

Case B.

Letters Patent No. 985,135, issued to Thomas Bilyeu and William S. Overlin February 28, 1911, have resulted from this application and protects quite broadly a later embodiment of the selector mechanism compromising selectors which set the ejectors in operative position. Our new machines will employ the subject-matter of this patent quite fully as we have found it unnecessary to depart therefrom.

Case C.

This is an application of Messrs. Bilyeu, Overlin and Gridley, and is directed particularly to the special type of rotary actuator identically as employed in the Overlin Computer. We have some very valuable claims in this application to said subject-matter, and furthermore, to the actuator mechanism as associated broadly with the printing mechanism and key release mechanism.

Case D.

This is an application by the same inventors as in Case "C," and is really to a division of Case "C," covering the printing mechanism embodying the reciprocable type bars and indexing means therefor. We adhere to this general idea in the White Cashier.

Dr. A. A. Millikan———3.

Case E.

This application is designed to cover the Bilyeu Change-Maker or Computer, a machine incorporating the selector principle of the machine of application, Case "B" but modified only to afford a computing or subtracting action.

Case F.

The street car machine is the subject-matter of this application and the claims are especially directed to the construction whereby the handle or actuator of the other machine is dispensed with and

the keys are used to initially select and subsequently eject the coins by a very simple but extremely effective co-operation of the keys with the ejectors.

Case G.

This is an application by William S. Overlin to cover the bill paying mechanism alone or as used in combination with a coin paying section, the mechanism being capable of handling the bills in flat condition necessary from a commercial standpoint.

Case H.

The machine of this application is the Overlin computer or change-maker, and the mechanism covers computing means for mechanically subtracting or computing to eject coins representing the difference between the amount received and the amount of purchase.

Case I.

This is the application for the White Bank Cashier in its completed commercial form and while the machine includes certain mechanisms of the several applications before enumerated in addition broad protection is being obtained for the idea of combining an adding section with a coin-paying section so that, if desired, the adding section may be used alone as an ordinary adding machine or may even be constructed and used as an adding machine without being attached or combined with a coin paying mechanism. I feel that this application is one of the most important of all our cases. While

it will adhere in many respects to other applications granted or allowable, it will fully cover all of the principles of the machine in its final, developed commercial form. From our research, we know that the principles of the design and construction of this machine particularly, will be fully protected in every respect. Furthermore, the design and mechanism used in this machine will control in all other machines placed upon the market by the company, especially the computing machine, so that the protection afforded by our application for patent, as well as the mechanical standardizing and development of the

Dr. A. A. Millikan———#4.

machine will answer almost entirely in the completion of our other models.

Case K.

The general design of the money handling machine involving the relative positions of the coin receptacles, open money chute common to all of said receptacles, bank or bank keys at the right of said receptacles and operating handle at the right extremity of the machine, is the subject-matter of this application.

Case L.

This application is directed to the special replenishing alarm associated with all of the receptacles and affording a signal to warn the operator of the

machine when the supply of coins in the receptacle is diminished to a predetermined point. This alarm is used in the White Cashier but is being covered separately since it is adapted for application to any money handling machine of the general type of our cashier.

Case M.

This application is on our Currency Paying Machine, which is an improvement and practically speaking, new and original as affecting the handling of currency. Before taking this as the method of handing out paper we have had a search made by our attorneys at Washington and we are advised that we will be able to obtain the broadest protection upon this character of machine, it embodying an entirely new principle as applied to the handling of paper money, and the only method handling it which, in my opinion, would prove a commercial success. We have not had a description of this machine or the principle by which we expect to handle currency therefore, we beg to advise you that this machine will handle currency in flat condition, without any necessity of loading the machine except to place in the proper receptacle a package of bills just as they are found in the Bank. They are lifted out on a pneumatic principle one by one as accurately and as rapidly as the Cashier Machine works in the handling of coin alone. Moreover, it will be what might be termed the upper deck of the machine so that it will not materially increase

the size of the machine, but handle the paper over the coin tubes. In this way it will be so arranged that the operator can pay either coin or currency at will by means of a shift key engaging the currency or coin paying mechanism, as the case may be. Of course, the machine will be made to handle small change in coin, and it will operate to handle it and also the larger denominations in currency.

Dr. A. A. Millikan———#5.

The foregoing will answer fully the questions asked in your letter and we presume that nothing further need be said by us with reference to the company's affairs, as we feel absolute confidence in Messrs. Hopson and Hunter and know they would not make any representations to you that is not borne out by the facts and both of them having been in Portland so they have personally seen our factory, etc. They have complete data and knowledge as to the progress we have made. However, we should be very glad indeed to answer any further questions you see fit to make.

Yours faithfully,

UNITED STATES CASHIER COMPANY

Frank Menefee,
President."

FM:E

which said letter had theretofore and on June 7, 1912, at Portland, Oregon, been written and executed by the said defendant, Frank Menefee, with the intent then

and there in the said defendant, Frank Menefee, that the said letter contained in the said envelope and the said envelope should be sent, transmitted and delivered by and through the postoffice establishment of the United States to the said addressee at Fort Jones, California; and which said letter was then and there of and concerning the aforesaid scheme and artifice to defraud, which said scheme and artifice to defraud, the said defendants, Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine and Oscar A. Campbell, had theretofore, as hereinbefore alleged, conspired, combined and agreed to devise and to execute;

4. And the Grand Jurors, aforesaid, upon their oaths and affirmations, aforesaid, do further present, allege, find and charge:

That in pursuance and furtherance of the said unlawful conspiracy, combination, confederation and agreement, aforesaid, and to effect the object thereof, the defendant herein, Frank Menefee, did afterwards and on, to-wit, the 30th day of January, 1913, at Portland, Oregon, and within the jurisdiction of this court, knowingly, unlawfully and feloniously place and deposit and cause to be placed and deposited in a postoffice and postal station of the United States postoffice establishment, to-wit, the United States postoffice at Portland, Oregon, for mailing and delivery and with postage fully prepaid thereon, a certain sealed envelope then and there addressed to Mr. Jos. Hunter, at Reno, Nevada, and

at the time of the mailing of said sealed envelope, afore-said, there was then and there enclosed in said envelope a certain letter which said letter was and is as follows, to-wit:

“January 30th, 1913.

Mr. Jos. Hunter,
Reno, Nevada.

Dear Sir:

We are trying to round out our stock selling as rapidly as possible. The fact is we have deals on at \$30.00 which will amply take care of the Company's treasury stock, and we have to handle, in order to keep the market clear, a quantity of stock for private parties and we are trying to take off the market all we possibly can. We can handle this situation very nicely if we can rush up our miscellaneous sales in some way.

I can not put this proposition up to very many and do not want to except in isolated places where it wont interfere with other sales and our stock selling generally. You are one of perhaps two or three that we have working for us, that we can put this confidential proposition up to, and we would not put it up to you except that you are going to a new location where I think there will not be much communication between the stockholders there and other places. If you do not want to work the proposition in this way, all you have to do is to say so and go at it in the same old way that you have been doing.

What I want to propose is that you could work like you did in northern California last summer at \$20.00 per share, only at that rate we would have to realize \$15.00 per share, which would only leave you with a commission of 25%. This advantage in the price would rush up the business so that you would make more money at that commission than at 30% insisting on selling at \$30.00 per share.

You understand if you work in this way that your subscriptions must be taken on the blanks that read Joseph Hunter, and your argument would be that the company stock was practically all placed and all provided for by contracts already made with a possibility of one or two failing and having to be sold to outside parties. With such a contingency no Company stock was to be had, but that you could sell a couple hundred shares or whatever amount you think proper to work on, and then sell it as long as you had sales, regardless of whether

#2 to Jos. Hunter, 1/30/13.

the amount runs out or not, and the stock you sell is either some of your previous sales at that price which your people have not been able to pay for, and which you can get by turning in the money quickly, or else that you got hold of a small block from a party that was hard up and had to realize some money, and in that way you were able to let them have the inside figure, unknown to the Company of course. As a matter of fact, this is a pri-

vate matter and must not be considered as Company business.

I do not need to say more to you, as you are so used to these situations, and will readily realize whether you had better work it this way or not, and if so on what plan you want to work. Whatever plan you do adopt if you go to working this way, write me fully personally, so I will know what to say if inquiries are made.

Yours faithfully,

Frank Menefec."

FM:HM"

Which said letter had theretofore and on January 30, 1913, at Portland, Oregon, been written and executed by the said defendant Frank Menefee; with the intent then and there in the said defendant, Frank Menefee, that the said letter contained in the said envelope and the said envelope should be sent, transmitted and delivered by and through the postoffice establishment of the United States to the said addressee at Reno, Nevada; and which said letter was then and thereof and concerning the aforesaid scheme and artifice to defraud, which said scheme and artifice to defraud, the said defendants, Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine and Oscar A. Campbell, had theretofore, as hereinbefore alleged, conspired, combined and agreed to devise and to execute;

5. And the Grand Jurors, aforesaid, upon their oaths and affirmations, aforesaid, do further present, allege, find and charge:

That in pursuance and furtherance of the said unlawful conspiracy, combination, confederation, and agreement, aforesaid, and to effect the object thereof, the defendant herein, F. M. LeMonn, did afterwards and on, to-wit: the 27th day of March, 1912, at Portland, Oregon, and within the jurisdiction of this court, knowingly, unlawfully and feloniously place and deposit and cause to be placed and deposited in a postoffice and postal station of the United States postoffice establishment, to-wit, the United States postoffice at Portland, Oregon, for mailing and delivery and with postage fully prepaid thereon, a certain sealed envelope then and there addressed to Mr. L. H. Robinson, at Moorcroft, Wyoming, and at the time of the mailing of said sealed envelope, aforesaid, there was then and there enclosed in said envelope a certain letter which said letter was and is as follows, towit:

"Frank Menefee,	Robert J. Upton
Pres. and Gen. Mgr.	Secretary.
E. O. Gernert,	F. M. LeMonn,
Asst. Gen. Sales Mgr.	Gen. Sales Manager.

UNITED STATES CASHIER CO.

Manufacturers

Automatic Computing

Change-Making, Recording

Coin-Paying Machines

Automatic Cashier

Visible Listing

for Banks, Pay Rolls

and

etc.

Adding Machine

Automatic Change-

Computing Machine

for Department and

Retail Stores, etc.

Home Office, Lewis Building,

Portland, Oregon, 3/27/12.

Mr. L. H. Robinson,

Moorcroft, Wyo.

Dear sir:

We take pleasure in acknowledging due receipt through our Mr. B. F. Bonnewell of your subscription dated Mar. 4/12 for fifty shares of the Capital Stock of this Company at \$30.00 per share total \$1500.00, together with payment on same of \$100.00 cash, \$400.00 in thirty days and \$1,000.00 on or before six months from date.

Your certificate will be delivered when final payment has been received. Make all future pay-

ments payable to the United States Cashier Company or B. F. Bonnewell.

For some time we have been operating our factory at Kenton full blast, and will be able to deliver our first machines within a very short time. We will turn them out in increasing numbers each month after the first machines are completed, so that by the latter part of the year we should have a sufficient number of commercial machines on the market to place us upon a substantial paying basis and declare to the stockholders a reasonable dividend.

Thanking you for past and awaiting your future favors, we remain,

Yours very truly,

UNITED STATES CASHIER COMPANY

F. M. LeMonn

Sales-Manager."

FML-HES

which said letter had therefore and on March 27, 1912, at Portland, Oregon, been written and executed by the said defendant, F. M. LeMonn; with the intent then and there in the said defendant, F. M. LeMonn, that the said letter contained in the said envelope and the said envelope should be sent, transmitted and delivered by and through the postoffice establishment of the United States to the said addressee at Moorcroft, Wyoming, and which said letter was then and there of and concerning the aforesaid scheme and artifice to defraud, which said scheme and artifice to defraud, the said defendants,

Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine, and Oscar A. Campbell, had theretofore, as hereinabove alleged, conspired, combined and agreed to devise and to execute;

6. And the Grand Jurors, aforesaid, upon their oaths and affirmations, aforesaid, do further present, allege, find and charge:

That in pursuance and furtherance of the said unlawful conspiracy, combination, confederation and agreement, aforesaid, and to effect the object thereof, the defendant herein, F. M. LeMonn, did afterwards, and on, to-wit, the 28th day of March, 1912, at Portland, Oregon, and within the jurisdiction of this court, knowingly, unlawfully and feloniously place and deposit and cause to be placed and deposited in a postoffice and postal station of the United States postoffice establishment, to-wit, the United States postoffice at Portland, Oregon, for mailing and delivery and with postage fully prepaid thereon, a certain sealed envelope then and there addressed to Mr. J. J. Bauer, at San Francisco, California, and at the time of the mailing of said sealed envelope, aforesaid, there was then and there enclosed in said envelope a certain letter which said letter was and is as follows, to-wit:

“Frank Menefee,	Robert J. Upton,
Pres. and Gen. Mgr.	Secretary.
F. H. Gloyd,	F. M. LeMonn,
Treasurer.	Gen. Sales Manager.

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Computing Machine

for Department and

Retail Stores, etc.

Home Office, Lewis Building,

Portland, Oregon,

March 28, 1912.

Mr. J. J. Bauer,

San Francisco, Calif.

Dear Sir:

We have your favor of the 26th and have carefully noted contents. We are sorry that we inadvertently failed to reply to your communication of the 7th inst.

We cannot see anything peculiar in the fact that brokers are offering 200 shares, or any part of the same, of this Company's stock at \$13.50, when

you remember that the stock was selling at par \$10. per share, up until December 12, 1910, and at \$11 up until February 1st, \$12½ up until July 1, 1912. Where there are more than 3000 stockholders who have subscribed for practically, in round numbers, 100,000 shares, it is not likely, but is absolutely true, that some of them will become financially embarrassed and will have to offer for sale or trade, some, if not all of their property. When a part of this property is U. S. Cashier stock it is not to be wondered at that it gets into the brokers' hands and in many cases they are forced to sell for less than they paid. However, the broker can make a profit when he sells at \$13.50 if the earlier subscriber of this stock sells to him for the same price he paid, \$10, \$11, or \$12.50.

For instance, consider this matter personally and ask yourself the question; if you were hard up for money and had to have it on other deals in order to save your property or your business, which may represent your principle interest, you would likely begin trading or selling, even at a sacrifice, some of your other property which was not as necessary for your comfort or livelihood. We would see nothing strange in the fact that stock was offered through brokers even if at \$5 per share, unless it represented dissatisfaction on the part of the stockholder, and this reason for letting go of stock has never been presented to our notice.

Mr. J. J. Bauer——#2.

The stock is selling freely at \$30 per share, and if the Company could legally, or believed it wise to speculate in stock, we would buy up this brokers stock and sell at an enormous profit, but our reason for offering stock to the public is simply and solely to enable us to get hold of the necessary funds to manufacture and place these machines on the market, and this Company has not deemed it wise to begin buying stock offered on the curb, no matter what the price may be. If you will talk with any curb broker you will find that he considers it a very healthy condition when he can get over par for stock in which he may be trading and he will only offer par and above because the Company's condition has been favorable enough to enable them to get a much higher price through their representatives who are eternally on the hunt for a prospective investor.

A stockholder's letter will be forwarded within a few days which will advise you that we have completed our Standard Commercial Bilyeu Automatic Cashier and that it has been working perfectly in every test devised for it. We are now manufacturing in commercial quantities and will be able to turn out machines from month to month in rapidly increasing numbers, until the fall of the year when we believe we can turn out several hundred machines per month.

The orders we now have on hand and are taking from daily demonstrations, will keep us busy for the next six to nine months to come, and we know we are entering a season of great prosperity. We believe the stockholders have reason to be congratulated upon becoming partners in this new industry.

Assuring you it will be our pleasure at all times to answer any and all questions concerning the Company and thanking you for past favors, we beg to remain,

Yours very truly,

UNITED STATES CASHIER COMPANY

F. M. LeMonn,
Sales-Manager."

FML:E

which said letter had theretofore and on March 28, 1912, at Portland, Oregon, been written and executed by the said defendant, F. M. LeMonn; with the intent then and there in the said defendant, F. M. LeMonn, that the said letter contained in the said envelope and the said envelope should be sent, transmitted, and delivered by and through the postoffice establishment of the United States to the said addressee at San Francisco, California; and which said letter was then and there on and concerning the aforesaid scheme and artifice to defraud, which said scheme and artifice to defraud, the said defendants, Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E.

Muraine and Oscar A. Campbell, had theretofore, as hereinabove alleged, conspired, combined and agreed to devise and to execute;

7. And the Grand Jurors, aforesaid, upon their oaths and affirmations, aforesaid, do further present, allege, find and charge:

That in purusance and furtherance of the said unlawful conspiracy, combination, confederation and agreement, aforesaid, and to effect the object thereof, the defendant herein, Frank Menefee, did afterwards and on, to-wit, the 19th day of August, 1912, at Portland, Oregon, and within the jurisdiction of this court, knowingly, unlawfully and feloniously place and deposit and cause to be placed and deposited in a post-office and postal station of the United States postoffice establishment, to-wit, the United States postoffice at Portland, Oregon, for mailing and delivery and with postage fully prepaid thereon, a certain sealed envelope then and there addressed to Mr. H. T. Johnson, at Grand Forks, N. D., and at the time of the mailing of said sealed envelope, aforesaid there was then and there enclosed in said envelope a certain letter which said letter was and is as follows, to-wit:

"Frank Menefee,	Robert J. Upton,
Pres. and Gen. Mgr.	Secretary.
F. H. Gloyd,	F. M. LeMonn,
Treasurer.	Gen. Sales Manager.

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Automatic Change-

Computing Machine

for Department and

Retail Stores, etc.

Home Office, Lewis Building,

Portland, Oregon,

August 19th, 1912.

Mr. H. T. Johnson,

Grand Forks, N. D.

Dear Sir:

Replying to your letter of August 10th, in which you enclose one of the same date addressed to you signed by Mr. Frank B. Feethan, will say:

As stated in the annual report, cases AO and B have resulted in letters patent being issued; in cases A, C and D, the patents are allowed, meaning that all of our claims have been allowed and that the

issuance of the patents is being held up because of our not having paid the final government fee and not having asked for their issuance.

We have not done this because we can renew our application by re-writing the claim each year, thereby lengthening the life of the patent and enabling us to write into our original application, many claims that will develop themselves as our standardizing and further development progresses.

In the other cases as indicated, the applications are filed, properly assigned to the Company by the inventors.

As to having had the records examined as to infringements, will say that our Attorney Mr. John F. Robb, has for some months past been devoting considerable of his time to the examination of the entire art of coin paying machines, particularly as adapted to the adding machine or combination, and his reports to us from time to time indicate that we will be fully protected and that all of our applications will be reasonably free from any chance of infringement whatever on any other known patent in the art.

The adding machine art is old and we can not claim any basic protection but our mechanism or machine, as we might say, is worked out entirely in a different method from any known adding machine, and will form the basis of a patent on the mechanical construction of the machine.

#2 To H. T. J. 8/19/12.

Were we going into the adding machine field alone, we would have to expect competition from all existing adding machine companies, although we believe we could successfully compete with them because of the simplicity of our machine, and the fact that it contains less parts and is more reliable, as well as performing certain offices and work that are not performed by the better known machines.

In the coin paying art, we are occupying a field practically new, in so far as any machine has been manufactured that would work in connection with the adding and listing device, and on this point and part of our machine, we are depending for our monopoly.

Our Attorneys have advised us, as I stated in my report, that we have the fullest protection with reference to this machine, the reference being to case "I," and as stated, the mechanism and principles of this machine will control all of the other machines we are placing on the market, and it will be found impracticable, if not impossible, to perform the work our machines will do, without going at it in a way so similar to our machines that it will be an infringement.

This mechanism is quite fully covered in case B, which has already gone to issue, and the new applications are intended more to cover the re-designing and certain minor improvements, than to

obtain the protection we need, as that is very fully covered by cases A, B and C, already issued or allowable.

We have had a special report from our Attorney with reference to the patent ability of our currency paying device, case M. We are advised that the principle we are applying with reference to the handling of currency, has never before been used in handling money, and that we can obtain protection therefor, and that there will be little or no likelihood of any previous patent or application.

The remark of Mr. Feethan that there is a great similarity between our machines and the Cash register is really not well founded in fact, inasmuch as the cash register has not attempted to do anything in the way of handling money. Its adding and listing devices are perhaps similar to ours, but those things are old and our use of them will not conflict with them in any manner, all the protection they have being their particular mechanism, and perhaps very little in that regard on account of the age of the patents.

The cash register, as I have stated, does not attempt to combine with their listing and accounting features any device

#3. To H. T. J. 8/19/12.

whatever for the computing of change or the paying of money or change by mechanical means, that

being done entirely by the individual or person operating the cash register.

With our machine, the patents cover the principles of having the machine automatically pay the money called for by the pressure of the keys, as well as add and list it. Also our computing machine application is directed to the handling of money, mechanically computing the difference between the two amounts, and automatically paying the amount of money representing this difference, as well as adding and listing the amount tendered and the amount of the purchase.

This application with the protection afforded in cases AO, B and C, and the new application on the re-designed and standardized form of the cashier machine, case I, cover all of the principles of our machines, so that any other machine will be merely the re-embodiment of these principles with certain improvements or changes so as to make them better adapted to slightly different purposes.

In regard to litigation, will say that we have never had any intimation of litigation of any kind with reference to any of our patents and have not had any one question the validity of any of our claims.

There is still approximately twenty thousand shares, par value of \$200,000, stock in the Treasury of the Company, a portion of which is represented by subscriptions that we are cancelling from time

to time on account of inability for some financial reason, of the subscribers to make their payments.

The stock that is now being sold is Treasury stock of the Company, and the entire amount for which the sale is made goes into the Treasury of the Company, less the selling agent's commission. No person receives any extra benefit or rake off out of the premium for which the stock is sold above par value.

Trusting that this will answer your questions, but assuring you that if you desire any further information, we will be more than pleased to write you further, we remain,

Yours faithfully,

Frank Menefee,
President."

FM:MM

Which said letter had theretofore, and on August 19, 1912, at Portland, Oregon, been written and executed by the said defendant, Frank Menefee, with the intent then and there in the said defendant, Frank Menefee, that the said letter contained in the said envelope and the said envelope should be sent, transmitted and delivered by and through the postoffice establishment of the United States to the said addressee at Grand Forks, North Dakota; which said letter was then and there of and concerning the aforesaid scheme and artifice to defraud, which said scheme and artifice to defraud, the

said defendants Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine, and Oscar A. Campbell, has theretofore, as hereinabove alleged, conspired, combined and agreed to devise and to execute;

8. And the Grand Jurors, aforesaid, upon their oaths and affirmations, aforesaid, do further present, allege, find and charge:

That in pursuance and furtherance of the said unlawful conspiracy, combination, confederation and agreement, aforesaid, and to effect the object thereof, the defendant herein, F. M. LeMonn, did afterwards and on, to-wit, the 29th day of February, 1912, at Portland, Oregon, and within the jurisdiction of this court, knowingly, unlawfully and feloniously place and deposit and cause to be placed and deposited in a postoffice and postal station of the United States postoffice establishment, to-wit, the United States postoffice at Portland, Oregon, for mailing and delivery and with postage fully prepaid thereon, a certain sealed envelope then and there addressed to Mrs. A. M. Armstrong, at 809 Wright & Callendar Bld'g., Los Angeles, California, and at the time of the mailing of said sealed envelope, aforesaid, there was then and there enclosed in said envelope a certain letter which said letter was and is as follows, to-wit:

"Feb. 29, 1912.

Mrs. A. M. Armstrong,
809 Wright & Callendar Bld'g.,
Los Angeles, Calif.

Dear Mrs. Armstrong:

Your night letter of yesterday received as follows:

'Englishman member of English Syndicate here for class A investments wants to buy right to manufacture machines England, Germany and France or England alone. If we have foreign protection can have sale completed forty eight hours by cable. Financial standing established in Los Angeles. Desires immediate reply. Other deals pending.'

We have replied to you as follows:

'Foreign rights of machines protected but will be necessary for personal interview with party in Portland. If sufficiently interested to come to Portland kindly advise by wire.'

We don't think there could be any good come from any correspondence of any party over such a serious matter when a ride of a day and one half would bring us together and matters could be taken care of in so much better way, as to warrant a personal interview; hence we feel that as we stated in our wire, these matters must be taken up at the home office personally, as we are not sufficiently in-

terested to attempt same by correspondence, inasmuch as it would, in all probability result in anything but a satisfactory manner.

Mrs. A. M. Armstrong———#2.

We want to thank you however for the interest you have taken in the matter and for calling our attention to same and if the party is serious in regard to this matter we will be only too pleased to talk the matter over, as the foreign rights are bound to bring some one much prosperity.

Thanking you for past and awaiting your further favors, we remain,

Yours very truly,

UNITED STATES CASHIER CO.

F. M. LeMonn,
Sales-Manager."

FML:E

Which said letter had theretofore and on February 29, 1912, been written and executed by the said defendant, F. M. LeMonn; with the intent then and there in the said defendant, F. M. LeMonn, that the said letter contained in the said envelope and the said envelope should be sent, transmitted and delivered by and through the postoffice establishment of the United States to the said addressee at Los Angeles, California; and which said letter was then and there of and concerning the aforesaid scheme and artifice to defraud, which said scheme and artifice

to defraud, the said defendants, Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine and Oscar A. Campbell, had theretofore as hereinabove alleged, conspired, combined and agreed to devise and to execute;

9. And the Grand Jurors, aforesaid, upon their oaths and affirmations, aforesaid, do further present, allege, find and charge:

That in pursuance and furtherance of the said unlawful conspiracy, combination, confederation, and agreement, aforesaid, and to effect the object thereof, the defendant herein, Frank Menefee, did afterwards and on, to-wit, the 24th day of July, 1912, at Portland, Oregon, and within the jurisdiction of this court, knowingly, unlawfully and feloniously place and deposit and cause to be placed and deposited in a postoffice and postal station of the United States postoffice establishment, to-wit: the United States postoffice at Portland, Oregon, for mailing and delivery and with postage fully prepaid thereon, a certain sealed envelope then and there addressed to Mr. J. W. Brett, at 727 9th Avenue, Lewiston, Idaho, and at the time of the mailing of said sealed envelope, aforesaid, there was then and there enclosed in said envelope a certain letter which said letter was and is as follows, to-wit:

"Frank Menefee,	Robert J. Upton,
Pres. and Gen. Mgr.	Secretary.
F. H. Gloyd,	F. M. LeMonn,
Treasurer.	Gen. Sales Manager.

UNITED STATES CASHIER CO.

Manufacturers

Automatic Computing

Change-Making, Recording

Coin-Paying Machines

Automatic Cashier

Visible Listing

for Banks, Pay Rolls

and

etc.

Adding Machine

Automatic Change-

Computing Machine

for Department and

Retail Stores, etc.

Home Office, Lewis Building,

Portland, Oregon,

July 24, 1912.

Mr. J. W. Brett,

727 9th Avenue,

Lewiston, Idaho.

Dear Sir:

Your letter of the 18th instant in regard to purchase of stock in our company at less than par is duly received. Your letter asks for the personal advice of the writer whether you should buy this stock or not, and you state that you have a little money, but have a family to support and are getting along in years.

You must realize that to advise you in a matter of this kind under these circumstances is a serious, and if I am at all conscientious, which I certainly am, I could not under any circumstances advise you where I thought there could be the least possible chance of your falling down on the investment.

The stock that is offered you is some stock that has been traded around no doubt and taken over by parties ready to do anything for the sake of realizing a little ready money. So far as we have found no stock we have sold for cash has ever gone on the market at less than the price paid for it, at least with the very rare exceptions where parties were absolutely compelled to have a little ready cash .

The question is also often asked, why, if we can buy this stock so cheaply and our price is \$30 per share, at which we are selling quantities of stock, do we not buy up the cheap broker stock. The answer to this is simply that the Company has no legal right to divert its funds in order to buy up and speculate in its own stock. One or two of the other directors and I have purchased some of the cheaper stock which we are holding, but of course our funds are necessarily limited and we can only buy what we can pay for in cash, and really, we have bought until we have used every dollar of ready cash we are able to let go of. I have paid many thousands of dollars since my connection with the company buying up stock in this way, and still

buying a little occasionally when I have the funds on hands with which to handle it.

Page 2.

Now, in answer to your question, will say that the time was a year or a year and a half ago when the future of the company was uncertain in that it was an open question still as to our ability to finance the company and also as to the quality of the product we could turn out for our stockholders. I had great confidence in our future at that time and even then advised my own family and friends to invest money in the proposition which they could not afford to lose.

At this time the company's affairs present an altogether different aspect. We have ourselves so thoroughly entrenched financially that beyond any question we can place our machines on the market commercially. I have investigated more thoroughly the patent situation and am thoroughly convinced that no complications in that line can arise whereby we will be seriously, if at all, handicapped in placing our machines on the market. We have proven to our complete satisfaction that we have a mechanical ability surrounding us than can handle any mechanical proposition we desire to put up to them. They have demonstrated their ability by the perfecting and standardizing of our Bank Cashier, for which we are now making final dies and which we expect to have on the market within the present

year at the outside; when I say on the market I mean in quantities sufficient to return a substantial revenue to the company each month in the way of profits.

In addition to this we have developed, so that we know we will make a commercial success of it, a Currency machine for our machines. We have developed the Computing Machine so that it is without question a success mechanically and it will be one of the best sellers we will put on the market far outrivaling the *the* sales of the Cashier Machine. We are also developing and will place on the market our Lightning Change Maker particularly equipped for streetcar service and also for sale of tickets at five and ten cent theaters, and also with a little changing can make it adaptable for use in small cigar stores, etc. This machine as we can and will put it on the market will be a ready seller and find a ready market all over the United States.

With our success as to our ability to place these machines on the market the future of the company can scarcely be estimated. It sounds almost like dreaming when we tell of the sales we know we can make and the profit that will arise from it, and I feel like I am conservative when I say to you that with all of our models on the market and the factory running at sufficient capacity to any where near supply the demand our stock should return not less than from 50% to 100% on the par value. This is very conservative.

We have our factory running employing now about fifty men and have it fully equipped with machinery, everything being paid for to the minute. In addition to this we have our old factory or development shop in which our first models were made,

Page 3.

still running on experimental and development work on the different types of machines we are expecting to put on the market.

In conclusion I will only say that the future of this company and its prospects I have outlined above are given to you absolutely in good faith with full conscientiousness of the seriousness of the advise you are calling upon me to give you, and I certainly consider if you get the opportunity to buy any of this stock at the price you mention, you are passing up a "snap" if you do not buy it to the full extent of your financial ability.

You have no doubt had our letters and literature from time to time, but if you have not received them, will be glad to mail them to you if you will advise us.

Yours faithfully,

UNITED STATES CASHIER COMPANY,

Frank Menefee,

President."

FM-HG

which said letter had theretofore and on July 24, 1912, been written and executed by the said defendant, Frank Menefee; with the intent then and there in the said defendant, Frank Menefee, that the said letter contained in the said envelope and the said envelope should be sent, transmitted and delivered by and through the postoffice establishment of the United States to the said addressee at Lewiston, Idaho; and which said letter was then and there of and concerning the aforesaid scheme and artifice to defraud, which said scheme and artifice to defraud, the said defendants, Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine, and Oscar A. Campbell, had theretofore, as hereinabove alleged, conspired, combined and agreed to devise and to execute;

10. And the Grand Jurors, aforesaid, upon their oaths and affirmations, aforesaid, do further present, allege, find and charge:

That in pursuance and furtherance of the said unlawful conspiracy, combination, confederation and agreement, aforesaid, and to effect the object thereof, the defendant herein, Frank Menefee, did afterwards and on, to-wit, the 5th day of March, 1912, at Portland, Oregon, and within the jurisdiction of this court, knowingly, unlawfully and feloniously place and deposit and cause to be placed and deposited in a postoffice and postal station of the United States postoffice establishment, to-wit, the United States postoffice at Portland, Oregon, for mailing and delivery and with postage fully

prepaid thereon, a certain sealed envelope then and there addressed to Mr. John Marshall, at Harney, Oregon, and at the time of the mailing of said envelope, afore-said, there was then and there enclosed in said envelope a certain letter which said letter was and is as follows, to-wit:

"Frank Menefee Pres. and Gen. Mgr. F. H. Gloyd, Treasurer.	Robert J. Upton, Secretary. F. M. LeMonn, Gen. Sales Manager.
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UNITED STATES CASHIER CO.

Manufacturers

Automatic Computing

Change-Making, Recording

Coin-Paying Machines

Automatic Cashier
 for Banks, Pay Rolls
 etc.

Visible Listing
 and,
 Adding Machines

Automatic Change-
 Computing Machine
 for Department and
 Retail Stores, etc.

Home Office, Lewis Building,

Portland, Oregon,

Mr. John Marshall,
 Harney, Oregon.

March 5, 1912.

Dear Mr. Marshall:

Your favor of some days ago was inadvertently mislaid hence we beg to apologize for not replying earlier to same.

We forwarded you, on or about Feb. 17th, our regular stockholders letter and for fear the same was mis-carried are enclosing another herewith, which will acquaint you with the progress we have been making to date, also that we expect the First Standard Commercial Automatic Cashier to leave the Factory within a few days. This machine has been assembled and doing its work in a most praiseworthy manner, but we want to continue to test it out for a week or ten days yet so that we will be sure that when it leaves the factory there can be no possibility of an error in any transaction it may be called on to make.

The resale stock is selling freely at \$30 per share and as these subscriptions represent those that we cancelled on account of the subscribers being in arrears with payments and make an immense profit over the first or early selling price and we have confidence that the last few hundred shares to be sold will not be offered at less than \$50 per share.

Now that our machines are practically ready for the market we have every reason to expect a season of great possibility as we have many orders now on our books and have orders coming in almost daily from the most unexpected sources, as well as many of them being entirely unsolicited by us and this rush of orders looks as though it will take us six months or more to catch up with the demand that we now know exists for these machines.

Hoping and believing that the progress will be so rapid from now on that it will please the most critical stockholder and awaiting your further favors, we remain,

Yours very truly,

Frank Menefee,
President."

FM:E

which said letter had theretofore and on March 5, 1912, been written and executed by the said defendant, Frank Menefee; with the intent then and there in the said defendant, Frank Menefee, that the said letter contained in the said envelope and the said envelope should be sent, transmitted and delivered by and through the post-office establishment of the United States to the said addressee at Harney, Oregon; and which said letter was then and there of and concerning the aforesaid scheme and artifice to defraud, which said scheme and artifice to defraud the said defendants, Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine, and Oscar A. Campbell, had theretofore, as hereinabove alleged, conspired, combined and agreed to devise and to execute;

11. And the Grand Jurors, aforesaid, upon their oaths and affirmations, aforesaid, do further present, allege, find and charge:

That in pursuance and furtherance of the said unlawful conspiracy, combination, confederation and

agreement, aforesaid, and to effect the object thereof, the said defendant herein, Frank Menefee, did afterwards and on, to-wit: the 5th day of March, 1912, at Portland, Oregon, and within the jurisdiction of this court, knowingly, unlawfully and feloniously place and deposit and cause to be placed and deposited in a post-office and postal station of the United States postoffice establishment, to-wit, the United States postoffice at Portland, Oregon, for mailing and delivery and with postage fully prepaid thereon, a certain sealed envelope then and there addressed to Mr. John Marshall, at Harney, Oregon, and at the time of the mailing of said envelope, aforesaid, there was then and there enclosed in said envelope a certain letter which said letter was and is as follows, to-wit:

"Frank Menefee,	Robert J. Upton,
Pres. and Gen. Mgr.	Secretary.
F. H. Gloyd,	F. M. LeMonn,
Treasurer.	Gen. Sales Manager.

UNITED STATES CASHIER CO.

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Visible Listing
and

Adding Machine

Automatic Change-

Computing Machine

for Department and

Retail Stores, etc.

Home Office, Lewis Building,

Portland, Oregon.

February 17, 1912.

TO STOCKHOLDERS:

We are pleased to advise, as you will note above, that on February 1st Mr. F. H. Gloyd became actively identified with this Company as Treasurer, and we have been the recipient of many compliments from bankers and business men of the Pacific Northwest commending Mr. Gloyd as a Banker and Business Man and congratulating this Company on securing his services in handling the financial department of this Company. He has been one of our stockholders for many months past and last year visited with us looking into the Management of the Company as well as our Manufacturing Department and this gave him such confidence in our future prospects that he accepted our proposition to become Treasurer and from now on will devote his entire time and attention to our business.

In order to take up his duties with us, Mr. Gloyd tendered his resignation as President and Manager of a chain of four banks, viz: The State Bank of Prosser, Union Bank, of Granger, Grand View State Bank of Grandview and the Kiona State Bank of Kiona, all in the Yakima Valley, Washington. However, at the present time he is yet the nominal President of the last three named banks as he is being retained as the President only until such time as the directors can elect new Presidents.

Previous to his fifteen years' banking experience, he was the first auditor of Benton County, Wash., and for a number of years auditor of Pierce County, Wash., of which Tacoma is the metropolitan city.

You will readily appreciate that no business man holding such responsible positions as Mr. Gloyd held would leave same to go with any corporation if he had any doubt as to his new connection being other than that which offered most substantial promotion, not only for the present, but for all future time; hence we may be excused for taking some pride in making this announcement.

We also desire to announce most substantial additions to our Mechanical Staff. Since the first of the year we have secured a dozen mechanical experts direct from the Burroughs Adding Machine Co's plant in Detroit, which means that we now have fifteen men of the highest class designers, developers, and mechanics from that great manufacturing company. We also have many high class mechanics who have been for years with the National Cash Register Co. of Dayton, and other equally as well known specialty manufacturing plants.

#2.

There can be no question but with the addition of many thousands of dollars worth of new machinery which has been installed since January 1st, that today this Company is in a position to manu-

facture most successfully and turn out as good a product as any of these eastern plants which have been established for many years. Our factory payroll now amounts to between \$4000 and \$5000 per month, all of which is being expended along the line of manufacturing our first lot of Bilyeu Automatic Cashiers and Adding Machines.

Our business has already begun to expand to such an extent that we needed the room occupied by our Woodworking Department in order to give additional space for heavy machinery on the first floor; hence we have just completed a separate building into which we have transferred our Woodworking Department and are now ready to let the contract for the new addition to accommodate the Forge or Hardening Department.

The first commercial Automatic Cashier, as previously advised, will be finished and ready to leave the factory by the latter part of this month, which means that we are now practically ready to market our machines. Our salesmen are beginning training to take up the sale of these machines, as the stock selling campaign is practically at an end and the only stock that we are offering is that which has been released by cancelled subscriptions which were made many months ago and not settled for according to contract. As the stock is now selling freely at \$30 per share, you may readily understand that the Company is making a handsome profit on these resales.

After paying every obligation of the Company, including factory and equipment and all development expenses up to the time when our machines are ready for the market, we will still be able to provide a Manufacturing Fund of not less than \$200,000. This will be ample to continue the manufacture of the machines and place them on the market until such time as the proceeds from the sale of the machines will be returning a substantial profit to the Company.

We feel if you have carefully read the above you will agree with us and the experts who have visited our factory, that we have made most substantial progress considering the quality of workmanship and improvements we have made on our Automatic Cashier. It is no exaggeration to state that we have advanced the manufacture of these first commercial machines more rapidly and successfully than has heretofore been either accomplished or attempted by any of the well established manufacturing plants when they have placed a new device on the market.

Hoping that we have your hearty support in the future as we have had in the past, we beg to remain,

Very truly yours,

UNITED STATES CASHIER COMPANY,

Frank Menefee,

President."

which said letter had theretofore, and on February 17, 1912, at Portland, Oregon, been written and executed by the said defendant, Frank Menefee; with the intent then and there in the said defendant, Frank Menefee, that the said letter contained in the said envelope and the said envelope should be sent, transmitted and delivered by and through the postoffice establishment of the United States to the said addressee at Harney, Oregon; and which said letter was then and there of and concerning the aforesaid scheme and artifice to defraud, which said scheme and artifice to defraud, the said defendants, Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine and Oscar A. Campbell, had theretofore, as hereinabove alleged, conspired, combined and agreed to devise and to execute;

12. And the Grand Jurors, aforesaid, upon their oaths and affirmations, aforesaid, do further present, allege, find and charge:

That in pursuance and furtherance of the said unlawful conspiracy, combination, confederation and agreement, aforesaid, and to effect the object thereof, the defendant herein, F. M. LeMonn, did afterwards, and on, to-wit, the 8th day of April, 1912, at Portland, Oregon, and within the jurisdiction of this court, knowingly, unlawfully and feloniously place and deposit and cause to be placed and deposited in a postoffice and postal station of the United States postoffice establishment, to-wit, the United States postoffice at Portland,

Oregon, for mailing and delivery and with postage fully prepaid thereon, a certain sealed envelope then and there addressed to Mr. L. H. Robinson, at Moorcroft, Wyoming, and at the time of the mailing of said sealed envelope, aforesaid, there was then and there enclosed in said envelope a certain letter which said letter was and is as follows, to-wit:

“Portland, Oregon, April 8, 1912.

TO STOCKHOLDERS:

At last we are able to announce that our Standard Commercial “Bilyeu” Automatic Cashier has been completed and is working perfectly in every test suggested or devised for it. This feat of redesigning and standardizing the machine has been accomplished in much less time than has ever been done by any of the old established manufacturing companies. The demonstrating model of our Automatic Cashier (which is the only one we have shown to the stockholders when soliciting their financial support) has a keyboard of four rows or banks and its capacity for paying and listing is from one cent to \$99.99. In addition to the above the only work this model performed was that of making change for \$1, \$5, \$10 and \$20.

Comparing this demonstrating model with the Standard Commercial Machine, which is now finished, you will be able to at least partially understand what a tremendous and difficult task has been before us. The work the redesigned machine performs is as follows:

1st—Pays any amount from one cent to \$200.00.

2nd—Prints an instantaneous, visible and permanent record on the recording tape of any amount paid out or listed from one cent to \$9999.99.

3rd—Gives a visible total of each amount as paid, and also prints on the recording tape sub-totals and grand totals at will.

4th—Prints the amount paid on the face of the check by means of a duplicate printing device.

5th—Makes change for \$1, \$5, \$10 and \$20 by using one key only; the change given for each being the most serviceable—even down to a nickel for streetcar fare.

6th—Has nine denominational keys, permitting the operator to pay any number of any coin at will, or to make change in this way for any arbitrary amount desired without disturbing the keyboard or previous totals.

7th—Has removable coin-receptacles permitting storing of same in vault without unloading the coin; also permitting more than one cashier to use the machine by having his own change or funds in separate coin-receptacles.

8th—Signal bell rings when any coin tube is becoming depleted (but not empty) thus enabling the operator to replenish same before a false transaction can be made.

9th—The Cashier may be used as a visible adding and listing machine, without reference as to paying money, by depressing a shift key which disengages the paying mechanism, allowing adding and listing without removing the coin-receptacles.

If the operator has paid out \$5750.10 and then desires to add or list a number of checks, without paying any money, all that is necessary is to depress the total key, which would print a permanent record on the tape of the amount paid out and also clear the totaler. He would then depress the non-pay key and add or list as many transactions as he desired and total the same. To again make payments he would simply depress the keys representing the amount originally paid out (\$5750.10) as shown by the printed total and pull the lever which would re-read this amount into the totaler, without ejecting the same, and then release the non-pay key and the machine is again ready to pay, just as before adding or listing the checks.

This machine has a flexible keyboard permitting the correction of an error in any one row or bank of keys without resorting to the use of an error key, and is also equipped with a repeat key to be used when the operator desires to make duplicate transactions in paying, listing or adding. We can manufacture larger models which will pay up to \$1000 if any Bank or Pay Master desires same, although the hundreds of demonstrations we have made to the leading bankers and Pay Masters has

convinced us that there will be very few, if any, required to pay more than \$200.00 in coin, as they state that 95% of all the checks cashed are less than \$100 each.

Having finished the redesigning and standardizing, all our work is now devoted to manufacturing this Cashier and, as we have a great number of parts ready for assembling, we are now practically ready for the market in the way of taking orders and making deliveries. We have more orders on hand than we will be able to fill in the next six months, and orders are coming in continually at a rapid rate.

Our stock selling campaign is practically at a close, but in order to retain our splendid selling force until the machines are ready for the market, we are using them in the resale of stock previously subscribed but not settled for. This resale stock, subscribed for at a much lower figure than at the present price of \$30 per share, gives a handsome profit to the Company. Our financing, as you know has been most successful and the substantial subscriptions will furnish us ample funds for the manufacture and sale of the machines until the proceeds from same will take care of all future needs. Many of the heavy stockholders who have visited the factory from time to time are unanimous in their praise of the Management for being able to construct a machine with such wonderful utility and perfect mechanism in such a short length of

time, although we know this work of redesigning and standardizing has severely taxed the patience of many of our shareholders who have not had the privilege of visiting the factory and seeing the progress made.

We are enclosing herewith a page of this month's issue of the "Pacific Banker" and you will find thereon the impression which our factory and machines have made upon Mr. Lydell Baker, the editor of this, the only exclusive banking and financial paper of the Pacific-Northwest. A careful reading of what this keen business man thinks of this Company and its product after having made most thorough investigation and tests is convincing that this Company is not only destined to make History for Portland, but has entered upon an epoch of great earnings for the shareholders who have been fortunate enough to secure stock in this enterprise.

We have been favored with a visit to our general offices and factory by a great number of both Portland and out-of-town shareholders, and as many of you are either manufacturers or have visited other manufacturing plants, we earnestly request each and every one of you to make mental note of the things you see and write us on any subject or thing you observe that you believe could in any way be for the betterment of our Company and product.

Yours very truly,

UNITED STATES CASHIER COMPANY,

By F. M. LeMonn, Sales Mgr.

which said letter had theretofore and on April 8, 1912, at Portland, Oregon, been written and executed by the said defendant, F. M. LeMonn; with the intent then and there in the said defendant, F. M. LeMonn, that the said letter contained in the said envelope and the said envelope should be sent, transmitted and delivered by and through the postoffice establishment of the United States to the said addressee at Moorcroft, Wyoming; and which said letter was then and there of and concerning the aforesaid scheme and artifice to defraud, which said scheme and artifice to defraud, the said defendants Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine and Oscar A. Campbell, had theretofore, as hereinabove alleged, conspired, combined and agreed to devise and to execute;

13. And the Grand Jurors, aforesaid, upon their oaths and affirmations, aforesaid, do further present, allege, find and charge:

That in pursuance and furtherance of the said unlawful, conspiracy, combination, confederation and agreement, aforesaid, and to effect the object thereof, the defendant herein, F. M. LeMonn, did afterwards and on, to-wit, the 7th day of April, 1912, at Portland, Oregon, and within the jurisdiction of this court, knowingly, unlawfully and feloniously place and deposit and cause to be placed and deposited in a postoffice and postal station of the United States postoffice establishment, to-wit, the United States postoffice at Portland,

Oregon, for mailing and delivery and with postage fully prepaid thereon, a certain sealed envelope then and there addressed to Mr. B. F. Bonnewell, at Northern Hotel, Billings, Montana, and at the time of the mailing of said sealed envelope, aforesaid, there was then and there enclosed in said envelope, a certain letter which said letter was and is as follows, to-wit:

“April 7, 1912.

Mr. B. F. Bonnewell,
Northern Hotel,
Billings, Mont.

My Dear Bonnewell:

We are sending you herewith a letter which we are mailing to all stockholders today and would ask you to read the same carefully so that you will know just what we are saying to them and also be able to present the Company's affairs in such a manner that no one can doubt our sincerity regarding the progress we are making.

We are especially pleased to call your attention to the last page of this month's issue of the “Pacific Banker” as you will find thereon a writeup on our wonderful machines and the factory by Mr. Lydell Baker, the managing editor, to whom the writer had the pleasure and privilege of showing the machines and factory for the best part of two days last week.

This writeup should be invaluable to you as a canvassing document. If you read it carefully and

inform your prospective investor that the "Pacific Banker" is a weekly periodical, going to all the bankers of the Pacific Northwest, inasmuch as it is the only banking paper published on the Coast and the editor, Mr. Lydell Baker, is a keen business man who of course keeps in touch with the financial interests and doings of the entire Pacific Coast, we believe the editor's philosophizing of the fame that will naturally come to Portland because of its being the home of the U. S. Cashier Company is not overdue and is entirely within both the possibility and probability of the very near future.

This is in no sense an advertisement as no editor is going to go on record in this manner and jeopardise his position in the business world for an insignificant sum which would be required to pay for the space devoted to this article. We could have taken the editor out to our factory many months ago and have had this writeup of our industry appear in this valued periodical but we preferred to wait until such a time as a careful investigation by this keen business man could

Mr. B. F. Bonnewell———#2.

be nothing else but a great boost to this Company, both financially and from a manufacturing point of view, as could only be evidenced by a visit to our factory and careful examination of its equipment, and to see this redesigned Standard Commercial Automatic Cashier in actual work. Mr. Baker had

this machine demonstrated for him most thoroughly as we put it to every test that he could possibly think of and in each and every particular it worked perfectly—in every instance paying out the proper amount of coin, giving an instantaneous visible and *perment* record, printing the amount on face of check, adding same to the previous total, printing sub-totals and totals at will repeating the same transaction as often as desired by depressing the repeat key and then by the use of the shift key or non-pay key, adding and listing and sub-totaling the same at will, without reference to the paying out of money.

This writeup surely cannot help but enable you to close some business the very day that you receive it and I mean by that, some business you were unable to close and perhaps felt was lost or lost until some future time. If you will but take this “Pacific Banker” with you again call upon some of these prospects and give as a reason, that you want him to see this splendid writeup by a disinterested party and the only banking paper of the Pacific Northwest, so that your prospective investor will have that verification from an expert unselfish source it should convince him that he is making a mistake to delay this matter a single day.

It is positive fact that if you are to participate in the prosperity that should come to each of our representatives in this closing campaign of \$30 stock, you should use your head to the best ad-

vantage as well as put forth the greatest possible amount of energy and effort, as the advance to \$50 may take place almost any day and without any previous notice.

Hoping our efforts here at the office, in the way of this writeup will prove not only a boom to us with the banking fraternity who will use our machines but will also be of great value to you in closing business, we beg to remain,

Yours very truly,

UNITED STATES CASHIER COMPANY,

F. M. LeMonn,

Sales-Mgr."

FML:E

which said letter had theretofore and on April 7, 1912, at Portland, Oregon, been written and executed by the said defendant, F. M. LeMonn; with the intent then and there in the said defendant, F. M. LeMonn, that the said letter contained in the said envelope and the said envelope should be sent, transmitted and delivered by and through the postoffice establishment of the United States to the said addressee at Billings, Montana; and which said letter was then and there of and concerning the aforesaid scheme and artifice to defraud, which said scheme and artifice to defraud, the said defendants, Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine, and Oscar A. Campbell, had theretofore, as hereinabove alleged, conspired, combined and agreed to devise and to execute;

14. And the Grand Jurors, aforesaid, upon their oaths and affirmations, aforesaid, do further present, allege, find and charge:

That in pursuance and furtherance of said unlawful conspiracy, combination, confederation and agreement, aforesaid, to effect the object thereof, the defendant, F. M. LeMonn, afterwards and on, to-wit, the 27th day of August, 1912, having theretofore received from the defendant, B. F. Bonnewell, a telegram of which the following is a true and correct copy:

“NIGHT LETTER
THE WESTERN UNION TELEGRAPH
COMPANY

Aug 1912

Gillette Wyo 26

U. S. Cashier Co

708 Lewis Bldg

Portland, Ore

Can you furnish us with two hundred more shares to sell answer by wire kindly phone my wife to write me to Sheridan care Great Western Hotel as I leave here Thursday

B F Bonnewell.”

did at Portland, and within the State and District of Oregon, execute and cause to be transmitted, sent and telegraphed over and by means of the wires of the Western Union Telegraph Company, a certain telegram to the said B. F. Bonnewell, of which the following is a full, true and correct copy, to-wit:

“THE WESTERN UNION TELEGRAPH
COMPANY

August 27, 1912

B. F. Bonnewell
Gillette, Wyo.

Received wire. Allotting you two hundred more shares for cash.

United States Cashier Co.

FML:E
CHG”

with the intent then and there in the said defendant, F. M. LeMonn, that the said telegram should be sent, transmitted and delivered to the said defendant, B. F. Bonnewell, by the said the Western Union Telegraph Company; said telegram was then and there of and concerning the aforesaid scheme and artifice to defraud, which said scheme and artifice to defraud, the defendants Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine, and Oscar A. Campbell, had theretofore as hereinabove alleged, conspired, combined, confederated and agreed to devise and to execute;

15. And the Grand Jurors, aforesaid, upon their oaths and affirmations, aforesaid, do further present, allege, find and charge:

That in pursuance and furtherance of said unlawful conspiracy, combination, confederation and agreement,

aforesaid, to effect the object thereof, the defendant, Frank Menefee, afterwards and on, to-wit, the 19th day of May, 1912, having theretofore received from the defendant, B. F. Bonnewell, a telegram, of which the following is a true and correct copy:

“DAY LETTER
THE WESTERN UNION TELEGRAPH
COMPANY

Deer Lodge, Mont. May 19th, 1912.

Frank Menefee,
708 Lewis Bldg.,
Portland, Ore.

Wire Paul Dungan Big Timber, Montana, Wm. Bonnewell, Sheridan, Wyoming and myself here all care Hotel closing telegram and about stock advancing send them night letters tonight if you can.

B. F. Bonnewell.”

1105 AM

did at Portland, and within the State and District of Oregon, execute and cause to be transmitted, sent and telegraphed over and by means of the wires of the Western Union Telegraph Company, a certain telegram to the said B. F. Bonnewell, of which the following is a full, true and correct copy, to-wit:

“NIGHT LETTER
THE WESTERN UNION TELEGRAPH
COMPANY

May 19, 1912

To B. F. Bonnewell,
Deer Lodge, Montana.

Stock allotted practically exhausts amount at thirty and deals pending when closed will more than cover Close all business and report as you go. May have to raise price to fifty at any time. Directors meeting Tuesday night.

United States Cashier Co.”

Chg.

with the intent then and there in the said defendant, Frank Menefee, that the said telegram should be sent, transmitted and delivered to the said defendant, B. F. Bonnewell, by the said The Western Union Telegraph Company; said telegram was then and there of and concerning the aforesaid scheme and artifice to defraud, which said scheme and artifice to defraud, the defendants, Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine, and Oscar A. Campbell, had theretofore as hereinabove alleged, conspired, combined, confederated and agreed to devise and to execute;

16. And the Grand Jurors aforesaid, upon their oaths and affirmations, aforesaid, do further present, allege, find and charge:

That in pursuance and furtherance of said unlawful conspiracy, combination, confederation and agreement, aforesaid, and to effect the object thereof, the defendant, Frank Menefee, afterwards, and on, to-wit, the 5th day of June, 1912, did, at Portland, Oregon, execute and cause to be transmitted sent and telegraphed over and by means of the wires of the Western Union Telegraph Company, a certain telegram to Mr. Edward E. Amsden, at Bender Hotel, Houston, Texas, of which the following is a full, true and correct copy, to-wit:

“DAY LETTER
THE WESTERN UNION TELEGRAPH
COMPANY.

Portland, Ore. June 5, 1912.

Edward E. Amsden,
Bender Hotel,
Houston, Texas.

Patents and applications filed fully protect Cashier Adding Machine computing machine little change maker and currency paying machine. After extensive search our attorneys assure us amply protected in monopoly of devices. No suits whatever pending against Company. Assets Bills and accounts receivable and cash on hand for stock sold two hundred ninety five thousand. Real estate including factory site and building one hundred twenty seven thousand. Machinery tools equipment and development commercial machines one hundred twenty thousand. Paid for patents stock

and cash approximately four hundred thousand. Liabilities unpaid on patent contracts not yet due twenty five thousand. Bills Payable and endorsement on paper sold seventeen thousand. Total assets Nine Hundred forty two thousand. Total Liabilities forty-two thousand.

Frank Menefee."

Charge
U. S. C. Co.
FM-HG

With the intent then and there in the said defendant, Frank Menefee, that the said telegram should be sent, transmitted and delivered to the said Edward E. Amsden, by the said the Western Union Telegraph Company; said telegram was then and there of and concerning the aforesaid scheme and artifice to defraud, which said scheme and artifice to defraud, the defendants, Frank Menefee, F. M. LeMonn, Thomas Bilyeu, E. O. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine, and Oscar A. Campbell had theretofore as hereinabove alleged, conspired, combined, confederated and agreed to devise and to execute;

Contrary to the statute in such cases made and provided, and against the peace and dignity of the United States of America.

Dated at Portland, Oregon, this 27th day of February, 1915.

A TRUE BILL.

John Driscoll.

Foreman of the United States Grand Jury.

Clarence L. Reames,
United States Attorney.

The following witnesses were examined under oath
before the Grand Jury:

W. S. Overlin, F. A. Bullington, Fred V.
Conley, Nelson White, J. F. Plover, N. C. Oviatt,
C. J. W. Hayes, Myrtle Meadows, George W.
Moyer, Harry Wainright, John Marshall, C. F. L.
Smith, A. A. Milliken, J. W. Zufall, Harry Car-
ruthers, R. O. Holmes, John Straub, T. W. Harris,
L. H. Robinson, C. K. Clarke, E. W. Draper,
Jonas Hansen, W. B. Morse, E. D. Paine, R. L.
Anderson, E. A. Mulkey, C. A. McMahon, R. L.
Robison, E. O. Tobey, S. M. Sim, J. W. Brett,
J. S. Swenson, H. S. House, W. R. Litzenberg;

The following named witnesses appeared at their
own request and testified under oath before the Grand
Jury:

S. M. Mears, F. H. Gloyd, J. F. Robb, Frank
Menefee (one of the defendants herein) and
Thomas Bilyeu (one of the defendants herein).

Endorsed: A True Bill, John Driscoll, Foreman
Grand Jury.

Filed February 27, 1915.

G. H. Marsh, Clerk.

And afterwards, to-wit, on Monday, the 10th day of May, 1915, the same being the 62nd judicial day of the regular March, 1915, term of said Court; present: the Honorable Robert S. Bean, United States District Judge presiding, the following proceedings were had in said cause, to-wit:

RECORD OF ARRAIGNMENT AND PLEA OF O. E. GERNERT.

Now, at this day, come the plaintiff by Mr. Clarence L. Reames, United States Attorney, and the defendants O. E. Gernert and F. M. LeMonn, each in his own proper person and by Mr. C. C. Dalton, of counsel; whereupon said defendants O. E. Gernert and F. M. LeMonn being duly arraigned upon the indictment herein, for plea thereto, each for himself says he is not guilty.

And afterwards, to-wit, on Saturday, the 21st day of August, 1915, the same being the 42nd judicial day of the regular July, 1915, term of said Court; present: the Honorable Robert S. Bean, United States District Judge presiding, the following proceedings were had in said cause, to-wit:

RECORD OF TRIAL AND RECORD OF VERDICT.

Now, at this day, come the plaintiff by Mr. Clarence L. Reames, United States Attorney, and Mr. John J. Beckman, Assistant United States Attorney, and the defendants Frank Menefee, F. M. LeMonn, Thomas

Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, and Oscar A. Campbell appearing each in his own proper person and by his counsel as of yesterday; whereupon the jury empaneled herein come into court and return to the court their verdict in words and figures as follows, to-wit, "We, the jury in the above entitled action, find the defendants Frank Menefee, F. M. LeMonn, O. E. Gernert, B. F. Bonnewell, H. M. Todd, and Oscar A. Campbell guilty as charged in the indictment, and the defendant Thomas Bilyeu not guilty. We, the jury, also recommend the defendant, Oscar A. Campbell, to the mercy of the court. Wm. Fleming. Foreman." which verdict is received by the court and ordered to be filed; whereupon on motion of said plaintiff it is ordered that each of said defendants except the defendant F. M. LeMonn be allowed to go upon the bail heretofore given by them respectively, but that the bail of the defendant F. M. LeMonn be and the same is hereby increased to the sum of \$5000.00 and that in default of said bail he stand committed to the county jail of Multnomah County, Oregon, and on motion of said defendants, it is ordered that they be and each of them is hereby allowed ten days from this date within which to file a motion for new trial herein. And afterwards, to-wit, on the 21st day of August, 1915, there was duly filed in said Court a Verdict, in words and figures as follows, to-wit:

VERDICT.

*In the District Court of the United States for the
District of Oregon.*

United States of America,

vs.

Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E.
Gernert, B. F. Bonnewell, H. M. Todd, Joseph
Hunter, O. L. Hopson, P. E. Muraine, and Oscar
A. Campbell,

Defendants.

We, the jury in the above entitled action, find the defendants Frank Menefee, F. M. LeMonn, O. E. Gernert, B. F. Bonnewell, H. M. Todd, and Oscar A. Campbell guilty as charged in the indictment, and the defendant Thomas Bilyeu not guilty.

We, the jury, also recommend the defendant, Oscar A. Campbell, to the mercy of the Court.

Wm. Fleming, Foreman.

Filed, August 21, 1915.

G. H. Marsh, Clerk.

And afterwards, to-wit, on Monday, the 25th day of October, 1915, the same being the 97th judicial day of the regular July, 1915, term of said Court; present: the Honorable Robert S. Bean, United States District Judge presiding; the following proceedings were had in said cause, to-wit:

RECORD OF SENTENCE OF O. E. GERNERT, THAT ORDER ADMITTING TO BAIL. AND ORDER ALLOWING TIME TO SUBMIT BILL OF EXCEPTIONS, AND STAYING EXECUTION.

Now at this day come the plaintiff by Mr. Clarence L. Reames, United States Attorney, and the defendants Frank Menefee, F. M. LeMonn, O. E. Gernert, B. F. Bonnewell, H. M. Todd, and O. A. Campbell, each appearing in his own proper person and by Mr. Martin L. Pipes, Mr. A. P. Dobson, Mr. John F. Logan, Mr. Robert F. Maguire, and Mr. Larkin Bilyeu, of counsel; whereupon said plaintiff moves the court for judgment upon the verdict of the jury heretofore filed herein; whereupon the court having heard the statements made on behalf of said defendants:

It is considered that said defendant Frank Menefee and the said defendant F. M. LeMonn each be imprisoned in the United States penitentiary at McNeils Island, Washington, for the term of one year and ten days, and that said defendants O. E. Gernert, B. F. Bonnewell, H. M. Todd, and Oscar A. Campbell each be imprisoned in the county jail of Multnomah County, Oregon, for the term of four months and that each of said defendants stand committed until this sentence be performed or until they be discharged according to law. Whereupon on motion of said defendants it is ORDERED that they be and they are hereby allowed until December 1, 1915, within which to submit a bill of exceptions herein, and on motion of said plaintiff it is

ORDERED that the bail of the said defendants Frank Menefee and F. M. LeMonn be and the same is hereby fixed at the sum of \$5000.00 and that the bail of the said defendants O. E. Gernert, B. F. Bonnewell, H. M. Todd, and Oscar A. Campbell be and the same is hereby fixed at the sum of \$2500.00; and it is further ORDERED that execution of the sentence be stayed as to said defendants upon the filing of bonds in the amounts herein fixed, until December 1, 1915.

And it appearing to the court that the said F. M. LeMonn does not desire to give further bail, it is ORDERED that commitment forthwith issue in accordance with the judgment of this court as to the said defendant.

And afterwards, to -wit, on the 29th day of March, 1916, there was duly filed in said Court, and cause, a Bill of Exceptions, in words and figures as follows, to-wit:

BILL OF EXCEPTIONS.

Be it remembered that on the 7th day of July, 1915, at a stated term of said court beginning and held in Portland, Oregon, before R. S. Bean, District Judge, presiding, the above entitled cause came on to be heard before said court and a jury impanelled therein (the defendants P. E. Muraine and O. L. Hopson not being on trail); the United States appearing by Clarence L. Reames, United States Attorney for the District of Oregon, and John J. Beckman, Assistant United States Attorney for said district, and the defendants Menefee, LeMonn, Bilyeu, Bonnewell, Todd and Campbell being

present in person and represented by counsel, and the defendant O. E. Gernert being present and represented by his counsel Robert F. Maguire:

Whereupon the following proceedings were had, to-wit:

(Note. Hereafter for the purpose of brevity in this statement of the evidence, wherever the term "the defendants" is used in this statement of the evidence, it means and includes the defendants Frank Menefee, F. M. LeMonn, B. F. Bonnewell, H. M. Todd, and Oscar A. Campbell—the term does not include either the defendant O. E. Gernert or the defendant Thomas Bilyeu.)

It was stipulated by the United States Attorney and by the attorneys for "the defendants," and particularly by the attorney for the defendant O. E. Gernert that in order to expedite the trial that the record should show that an objection in due and proper form was duly and timely made, overruled by the court, and an exception allowed to each defendant, to each and every question, answer, and matter of testimony and evidence offered by the United States that was no proof of an act done, words written by, or conversation talked with, spoken by, or in the presence of, each particular defendant; the court stating that the United States must subsequently connect the testimony with the defendant Gernert.

The plaintiff, to sustain the issues on its part, offered evidence, which was received, tending to support the

allegations of the indictment, and to prove that the United States Cashier Company, at all the times specified in the indictment, was a corporation organized and existing under and by virtue of the laws of the State of Oregon, with its principal office and place of business in the city of Portland, county of Multnomah, and within the state and district of Oregon; that at all times between the first of September, 1910, and the 31st day of January, 1914, the defendant Frank Menefee was the duly elected, qualified and acting director of said corporation, and that at and during all the times between the 1st day of September, 1910, and the 31st day of January, 1914, the said Frank Menefee was the duly elected, qualified and acting president of said corporation, and that at and during all of the times between the 28th day of September, 1910, and the 31st day of January, 1914, the said Frank Menefee was the duly elected, qualified and acting General Manager of said corporation; that at all the times and dates between the 1st day of September, 1910, and the 1st day of November, 1912, the defendant F. M. LeMonn was the duly elected, qualified and acting Sales Manager of said corporation; that at all the times between the 1st day of January, 1911, and the 1st day of January, 1912, the defendant Gernert was an agent and salesman of said corporation, and the duly appointed, qualified, and acting Assistant Manager of said corporation; that there was no evidence offered that the defendant Gernert tendered his resignation to his position, but the books of the company show that he was not credited with any salary or expense money as such Assistant

Sales Manager after the 31st day of December, 1911; and the witness Gloyd testified that Gernert was not Assistant Sales Manager after that date; and the defendant Menefee testified that he didn't work for the company after the 1st day of January, 1912, and there was no other evidence offered that he was Assistant Sales Manager after that date, other than a letter written May 16, 1912, being Government Exhibit "E66," as follows:

GOVERNMENT EXHIBIT "66."

May 16, 1912.

Mr. O. E. Gernert,
432 Pioneer Bdg.,
Seattle, Wash.

My Dear Gernert:

I am herewith enclosing you blueprint showing our factory property and buildings which may be of some assistance to you in the way of evidence of what you are telling with reference to the buildings and property, especially as to its size, etc. You will notice the property outlined as belonging to the Company, and also the size and location of the buildings. This print is according to scale, so it will be very easy for you to determine what buildings we have located on our property.

In this connection I am wondering if you have really in your mind and in your work, keeping strictly up-to-date with reference to the progress we have made. I am not beginning this letter as trying

to give you "hot air," but a simple statement of the facts as to our present condition, aiming to more thoroughly imbue you with the idea that the proposition is right, and that if properly presented cannot but impress the customer you are trying to interest him in the purchase of stock. You want to remember that you are now offering stock for sale in a fully tried out proven and demonstrated proposition. Our commercial machine is completed and tried and found to be perfect in every respect and in a week's demonstration of it here in the city has met with the approval and endorsement of every banker and business man who has examined it. This leaves the machine no longer a question of promises, but a demonstrated fact.

The enclosed blueprint shows you the property we own as a factory site and the buildings thereon, this having been an existing fact for some months past. Our buildings are stocked with all of the machinery necessary to manufacture the machines in commercial quantities, and it is estimated by our factory superintendent that less than \$5000 per month will take care of our plant and the making of dies to our full capacity until such time as we have our machines delivered to the market in commercial quantities so as to bring money back into the treasury. This with the resources and assets you know we have on hand makes our success financially a demonstrated fact for our ground, our buildings and our machinery are paid for and

title is in the Company and nothing exists against it in the way of liens and incumbrances whatsoever.

As you know, when we first began the financing of our Company we began with the aim and expectation of redeeming the stock which had been issued and placed in escrow in payment for patents, inasmuch as we could do this thereby saving a large amount of stock to the Company which we could sell and use for other purposes. The amount necessary to redeem this stock was \$200,000 and up to this time, besides having built our factory, stocked it with machinery and paying expenses of developing our commercial machine, including practically three-fourths of the expenses of making our dies, our die making being at that stage at this time we have reduced the amount necessary for the final redemption of the patent stock to \$30,000; this without having negotiated any loans and having wiped out our other indebtedness in the meantime.

Within the next few days we will have out more of our commercial machines, the parts being all completed for several of them and they being now in the assembling room, and being put together by our mechanics. A little time now will be needed in completing the making of our dies and then our factory is sufficient to turn out machines at the rate of several hundred per month; of course the output increasing from this time on until we have reached

the minimum output we can handle in our present factory.

I want to impress on you that our progress and the way we stand to day actually exist and are apparent to every person who comes to our city and looks us over. The time was when we were almost fearful of having people brought to Portland to investigate us because we had not demonstrated our ability to make good and people of the city might say things, unexplained would work against us rather than for us, but today and for some time past we have not hesitated to have the brightest business men brought here to look at our plant and learn in the fullest detail what we have accomplished and what we have before us. We have been looked over by bankers and the shrewdest business men from such places as Chicago and other eastern points as well as from Montana, Wyoming, California, and other places, and our stockholders are also given a standing and urgent invitation to see our plant and I can say, without a single exception that those who have taken the trouble to come and visit our offices and factory, all have gone away not only entirely satisfied, but enthusiastic.

These facts I want you to remember actually exist and believing them yourself you can impress your customer with this belief.

The question will naturally arise in your mind and perhaps in the mind of your customer why, if

we are in this condition financially and our factory has made this progress, we are still selling stock. The answer is this; We began the making of this progress along with our financing and have kept our financing ahead of our expenditures so we have carried through everything we have undertaken to do, and while the Company's stock is all sold and we could not, under the order of Board of Directors, increase our stock liability at all, not even a single share, we began the reselling campaign with some \$250,000 of unpaid subscriptions out of which you must realize there will be a number of thousands of dollars which we are unable to collect from the subscribers on account of financial conditions alone. In other words many who should not make such an investment because they are unable to pay; others who have prospects of being able to pay when they give the subscription and sign *and sign* the note meet with financial reverses in their business affairs so that it is very convenient, if not impossible to meet their obligation. We have our finances in such condition that we do not need to enforce payments in cases of this kind but find it preferable and profitable to cancel all such subscriptions and resell again at a much higher figure, realizing thereby a much greater sum for this Company's treasury than if we should enforce collection.

We are not having to cancel where people are able to pay. They are all paying their notes will-

ingly. They being the situation you can realize that we only have a little more stock to sell and the amount that can be sold by any agent depends on how quickly he sells so as to get in ahead of other salesman as we are not allotting it, but allowing each one to make as many sales as he can until such time as we are compelled to stop.

Mr. LeMonn is out of town for a couple of weeks, which accounts for my writing you in person. As you are aware I was also out of the city for some five weeks only getting here a little over a week before Mr. LeMonn left, therefore I may not be fully informed as to your prospects and the conditions surrounding you and I would take it as a special favor to have a letter from you advising me fully *fully* along these lines, and I assure you anything we can do from this office will be promptly attended to.

Trusting that you will be able to do a little more than your share of the business yet to be done and with best personal regards of the writer,

I am,

Yours faithfully,

.....

President.

FM:E.

That at and during all of the times and dates between the 15th day of April, 1911, and the 31st day of January, 1914, the defendant B. F. Bonnewell was the duly

elected, qualified and acting Fiscal Agent for the said corporation, and an agent and salesman for said corporation, engaged in selling the stock thereof; that at and during all of the times and dates between the 15th day of April, 1911, and the 1st day of September, 1913, the defendant H. M. Todd was a duly appointed, qualified and acting Sales Agent for said corporation, engaged in selling the stock of the said corporation; that at and during all the times and dates between the 26th day of May, 1911, and the 31st day of January, 1914, the defendant Joseph Hunter was the duly appointed, qualified and acting Sales Agent for said corporation, engaged in selling the stock thereof; that at and during all the times and dates between the 23rd day of November, 1910, and the 1st day of July, 1913, the defendant O. L. Hopson was the duly appointed, qualified and acting Sales Agent of said corporation, engaged in selling the stock thereof; that at and during all the times and dates between the 6th day of March, 1911, and the 31st day of January, 1914, the defendant P. E. Muraine was the duly appointed, qualified and acting Sales Agent for said corporation; that at and during all of the times and dates between the 12th day of June, 1911, and the 31st day of January, 1914, the defendant Oscar A. Campbell was the duly elected, qualified, and acting director of said corporation, and that at and during all of the times between the 30th day of January, 1912, and the 31st day of January, 1914, the defendant Oscar A. Campbell was the duly elected, qualified and acting Vice-President of said corporation; that at and during all of the times and dates between the 9th day of June,

1913, and the 31st day of January, 1914, the defendant Thomas Bilyeu was the duly elected, qualified and acting Director of said corporation.

That at and during all of the times and dates between the 1st day of September, 1910, and the 31st day of January, 1914, the capital stock of the said corporation amounted to the sum of \$1,200,000.00, divided and segregated by the articles of incorporation of said corporation into 120,000 shares of the par value, as fixed and stated in said articles of incorporation, of \$10.00 for each and every of said shares.

And the plaintiff, to sustain the issues on its part, offered evidence which was received, which evidence tended to prove that at the city of Portland, within Multnomah County, Oregon, and on or about September 1, 1910, "the defendants" did then and there unlawfully, wilfully and feloniously conspire, confederate and agree together to commit the acts made offenses and crimes by the laws of the United States to prevent the use of the United States mails to promote fraud, to-wit, section two hundred fifteen of the criminal code of the United States; that is to say, "the defendants" did then and there unlawfully, wilfully and feloniously conspire, combine, confederate and agree together, and with divers other persons, to devise and execute a scheme and artifice to defraud to be effected by means of the postoffice establishment of the United States, and to obtain money and property by means of false and fraudulent representations, pretenses and promises from the fifty-five persons named in the indictment, and therein termed as

INVESTORS, and from divers other persons, and the public generally, by inducing, inciting and procuring the said INVESTORS and divers other persons and the public generally, to open communication with “the defendants” and with the said United States Cashier Company, a corporation, and by inducing, inciting and procuring the said INVESTORS and divers other persons, and the public generally, to purchase from “the defendants” and from said corporation, namely, United States Cashier Company, the shares of stock of said corporation and to pay over, deliver and to transfer to “the defendants” and to the said corporation, namely, United States Cashier Company, in exchange and payment for said shares of stock the money and property of the said INVESTORS and of divers other persons, the payment of said sums of money to “the defendants” and to the said corporation, namely, United States Cashier Company, and the transfer of said property to “the defendants” and to the said corporation; to be induced, incited and procured by the false and fraudulent representations of “the defendants” to be made to the said INVESTORS and to divers other persons by “the defendants.”

That it was a part and parcel of said unlawful, wilful and felonious conspiracy, so entered into by “the defendants,” that said scheme and artifice to defraud the said INVESTORS and divers other persons, and the public generally, should be by “the defendants” carried out, carried on and effected by the further means, methods, manner and plans, that is to say, “the defendants”

would cause, induce, incite and procure the said INVESTORS and many and divers other persons, and the public generally, to pay over and to deliver to and to transfer to "the defendants," and to the said corporation in payment of and in exchange for the shares of stock of said corporation, United States Cashier Company, money and property of the value of more than the sum of one million dollars, which said payment of said money and which transfer of said property was to be by "the defendants" induced, incited, procured and obtained by the dishonest, fraudulent and false representations and promises hereinafter set forth, all to be made to the said INVESTORS by "the defendants" and to divers other persons and the public generally, and to swindle, cheat and defraud said INVESTORS and each, every and all thereof, and various and sundry other persons, and the public generally, out of all of the said sums of money and the said property that the said INVESTORS and various other persons, and the public generally, should pay over and deliver to "the defendants" or either thereof, or to the said corporation;

That for the purpose of inducing, inciting and procuring the said INVESTORS and various and divers other persons and the public generally, to purchase said shares of stock of said corporation and to pay over and to deliver to "the defendants" and to the said corporation, money and property in exchange and payment therefor, "the defendants" would falsely and fraudulently and by means of printed advertisements to be by "the defendants" inserted in newspapers, in pamphlets,

in catalogues, in circulars and in letters, and to be written in letters, which said newspapers, pamphlets, catalogues, circulars and letters were to be by "the defendants" transmitted and caused to be transmitted and sent by and through, and by means of the postoffice establishment of the United States, to the said INVESTORS and to divers other persons, and by words to be orally spoken by "the defendants" represent, pretend and promise that the said corporation, owned the patents to a certain "CHANGE COMPUTING MACHINE," a certain "BANK CASHIER MACHINE," a certain "LIGHTNING CHANGE MAKER," a certain "CURRENCY PAYING MACHINE" and a certain "NEW STYLE ADDING MACHINE," and that the said corporation was engaged in the business of manufacturing and selling said machines, and each, every and all thereof; that on account of the said alleged ownership of said patents and the said alleged manufacturing of said machines by said corporation, the said shares of stock of said corporation, were of great commercial value and that large dividends would be by said corporation declared and paid thereon to the said INVESTORS and to all other persons who should purchase the same from "the defendants" or from the said corporation; that said corporation would declare and pay to all of said INVESTORS, and to divers other persons, and to all persons who should purchase the shares of stock from said corporation large and certain dividends upon said stock within six months from the date that any of said persons should purchase any of said shares of stock from "the defendants," or

either thereof, or from said corporation; and that the said corporation was the owner and in the possession of large bona fide orders for the purchase of said machines and that on account of said orders for the said machines the said corporation would make a large and certain profit; that the financial condition of the said corporation was excellent, and that the assets of said corporation far exceeded in value the total amount of the liabilities against and owned by said corporation; that a certain large amount of the capital stock of said corporation, which said stock would be offered for sale to the said INVESTORS and to divers other persons and the public generally, belonged to and was the property of the said corporation, and that the money derived from the sale thereof would be by said corporation invested and used in such a manner as to increase the assets of said corporation, and to make its shares of stock more valuable, and particularly for the purpose of purchasing and building factories in which to increase the manufacture of said machines; that inasmuch as the assets of said corporation exceeded and was greater than the liabilities of said corporation, "the defendants" were justified in raising and increasing the selling price of said shares of stock from the said par value of ten dollars each to a selling price of eleven dollars each; from a selling price of eleven dollars each to a selling price of twelve dollars and fifty cents each; from a selling price of twelve dollars and fifty cents each to a selling price of fifteen dollars each; from a selling price of fifteen dollars each to a selling price of twenty dollars each; from a selling price of twenty dollars each to a selling price of thirty dollars

each; and from a selling price of thirty dollars each to a selling price of fifty dollars each.

That in truth and in fact and as “the defendants” and each, every and all thereof at and during and between all the times and dates mentioned, specified and stated in the indictment then and there well knew, neither the said corporation, nor any of “the defendants” owned the patents to said certain “CHANGE COMPUTING MACHINE,” or said certain “LIGHTNING CHANGE MAKER,” or said certain “CURRENCY PAYING MACHINE,” or said certain “NEW STYLE ADDING MACHINE,” or either thereof; and

That in truth and in fact and as “the defendants” and each, every and all thereof, at and during and between all the times and dates mentioned, specified and stated in the indictment, then and there well knew, the said corporation was not engaged in either the business of manufacturing or selling said machines, or any thereof, but on the contrary its business was to sell and dispose of the said shares of stock; and

That in truth and in fact and as “the defendants”, and each, every and all thereof at and during and between all the times and dates mentioned, specified and stated in the indictment then and there well knew, the said shares of stock and each, every and all thereof, were of very little value and of practically no value whatsoever, and said shares of stock and each, every and all thereof were practically worthless; and

That, in truth and in fact and as “the defendants” and each, every and all thereof at and during and between all the times and dates mentioned, specified and stated in the indictment then and there well knew, no dividends whatsoever would ever be by said corporation, either declared or paid to the said INVESTORS, or to any other person who should purchase the said shares of stock by either the said corporation, or by any of “the defendants”; and

That in truth and in fact and as “the defendants,” and each, every and all thereof at and during and between all the times and dates mentioned, specified and stated in the indictment then and there well knew, none of the said INVESTORS, or any other person who should purchase said shares of stock, would ever receive, either from said corporation or from “the defendants” any dividend whatsoever; and

That in truth and in fact and as “the defendants” and each, every and all thereof at and during and between all the times and dates mentioned, specified and stated in the indictment, then and there well knew, the said corporation, was neither the owner nor in the possession of the said alleged bona fide orders for the purchase of said machines; and

That in truth and in fact and as “the defendants” and each, every and all thereof at and during and between all the times and dates mentioned, specified and stated in the indictment, then and there well knew, the financial condition of said corporation was not excellent but on the

contrary at and during all of the times and dates mentioned, specified and stated in the indictment, and as "the defendants" then and there well knew, the said corporation was absolutely insolvent; and

That in truth and in fact and as "the defendants" and each, every and all thereof at and during and between all the times and dates mentioned, specified and stated in the indictment, then and there well knew, the value of the assets of said corporation amounted to a sum much less than the total amount of the liabilities against and owed by said corporation; and

That in truth and in fact and as "the defendants" and each, every and all thereof at and during and between all the times and dates mentioned, specified and stated in the indictment then and there well knew, a very large amount of the shares of stock of said corporation, which "the defendants" were to represent as being the property of the said corporation, consisted of shares of stock owned by "the defendants" and all of the sums of money and all of the property received on account of the sale thereof would be appropriated by "the defendants" and none of the same or any part thereof would be paid into the treasury of the said corporation, to be used by it, either for increasing the assets of said corporation, or otherwise; and

That in truth and in fact, and as "the defendants" and each, every and all thereof at and during and between all the times and dates mentioned, specified and stated in the indictment, then and there well knew, none

of "the defendants" or any thereof, were at any time on account of the financial condition of said corporation justified in either raising or increasing the selling price of said shares of stock or any thereof; and

That in truth and in fact and as "the defendants" and each, every and all thereof at and during and between all the times and dates mentioned, specified and stated in the indictment, then and there well knew, each and every person who should purchase any of said shares of stock from "the defendants" or from said corporation, would suffer and sustain a loss on account of said transaction of all sums of money which any of said persons should pay over or deliver to "the defendants" or to said corporation, in exchange or payment for said shares of stock.

That it was a further part and portion of said unlawful, wilful and felonious conspiracy so entered into by "the defendants" that said scheme and artifice to defraud the said INVESTORS and divers other persons, and the public generally, should be by "the defendants" carried out, carried on and effected by the further means, methods, manner and plan, that is to say, that for the purpose of inducing, inciting and procuring the said INVESTORS and divers other persons, and the public generally, to purchase said shares of stock from said corporation and from "the defendants" and to pay over and deliver to "the defendants," and to the said corporation, money and property in exchange and in payment therefor, "the defendants" would from time to time during the existence of said conspiracy, fraudulently and dis-

honestly publish and cause to be published, false and untrue written and printed statements of the assets of said corporation, and false and untrue written and printed statements of the liabilities owed by said corporation, and false and untrue written and printed statements of the financial condition of said corporation. That in said false and untrue statements of the assets of said corporation, and in each, every and all thereof, the assets of said corporation would be by "the defendants" stated to be sums greatly in excess of the true value of all of the assets of said corporation; that in said false and untrue statements of the liabilities owed by said corporation, and in said false and untrue statements of the financial condition of said corporation and in each, every and all thereof, there would be by "the defendants" omitted therefrom liabilities owed by said corporation amounting to more than the sum of one-half million dollars;

That it was a further part and portion of said wilful, unlawful and felonious conspiracy so entered into by "the defendants" that said scheme and artifice to defraud the said INVESTORS and divers other persons, and the public generally, should be carried out, carried on and effected by "the defendants" selling said shares of stock to the said INVESTORS and to divers other persons in the following states, namely, Oregon, Washington, California, Idaho, Montana, Wyoming, Utah, Texas, Iowa, North Dakota, Michigan, Illinois, Colorado, New York and many and divers other states; that "the defendants" would so manage and control the business affairs of said corporation, to the end that more

than twenty-five per cent of all of the sums of money which should be by the said INVESTORS and by divers other persons and by the public generally, paid over, delivered and transferred to said corporation, and to "the defendants" in exchange and payment for said shares of stock, would be appropriated by "the defendants" to their own use and gain; that for the purpose of inducing, inciting and procuring the said INVESTORS and various and divers other persons and the public generally, to purchase said shares of stock of said corporation and to pay over and to deliver to "the defendants" and to the said corporation, money and property in exchange and payment therefor, "the defendants" would increase the selling price of said shares of stock from the said par value of ten dollars each to a selling price of eleven dollars each; from a selling price of eleven dollars each to a selling price of twelve dollars and fifty cents each; from a selling price of twelve dollars and fifty cents each to a selling price of fifteen dollars each; from a selling price of fifteen dollars each to a selling price of twenty dollars each; from a selling price of twenty dollars each to a selling price of thirty dollars each; and from a selling price of thirty dollars each to a selling price of fifty dollars each; by placing and causing to be placed in the postoffice of the United States, at Portland, in Multnomah County, Oregon, and causing to be delivered by the postoffice establishment of the United States, the said newspapers, pamphlets, catalogues, circulars and letters, and other letters to be written by "the defendants" which said letters would request the said INVESTORS and divers other persons to remit and to pay to "the de-

fendants” and to said corporation money in payment and exchange for said shares of stock, all of said newspapers, pamphlets, catalogues, circulars, and letters, to be sent and delivered by the postoffice establishment of the United States to the persons to whom addressed in pursuance of said conspiracy;

That the said conspiracy, combination and agreement aforesaid should and would continue from the said 1st day of September, 1910, until and including the 1st day of January, 1915; that said conspiracy was to be a continuing conspiracy, and that it was to continue at all times between the 1st day of September, 1910, until and including the 1st day of January, 1915, and that at and during all of the times and dates “the defendants” would continue to be parties to said conspiracy and would continue to commit the said acts, and crimes hereinbefore set forth in detail.

That the said wilful, unlawful and felonious conspiracy, combination and agreement, aforesaid, so entered into by “the defendants” on or about the 1st day of September, 1910, continued from the date of said conspiracy until and including the 1st day of January, 1915; that at and during all of the times and dates between the said 1st day of September, 1910, and the 1st day of January, 1915, said wilful, unlawful and felonious conspiracy, combination and agreement was continually in existence and in operation, and at and during all of said times “the defendants” continued to wilfully, unlawfully and feloniously conspire, combine, confederate and agree together to commit the said crime hereinbefore set forth in

detail. Over sixty witnesses were called by the plaintiff to prove this state of facts, and the greater portion of said facts was proven by the plaintiff by the introduction of a large number of letters and telegrams passing between "the defendants," and between "the defendants" and the INVESTORS. It was also proven that during all the time of the operation of the United States Cashier Company, that it was the custom of the defendant Menefee, acting as the president of the company, and of the defendant LeMonn, acting as the sales manager of the company, to frequently send to the agents of the United States Cashier Company who would be located at points far distant from Portland, Oregon, letters and telegrams advising said agents that the price of stock of the United States Cashier Company was about to be advanced, and that the purpose in writing these letters and sending these telegrams upon the part of the said Menefee and the said LeMonn was that the agent of the company receiving said letters and said telegrams would show the same to prospective purchasers of stock for the purpose of hurrying the said prospective purchaser into making a purchase of said stock, and that it was an habitual custom of the said Menefee and the said LeMonn and the said agents in the field, to follow this practice in inducing prospective purchasers to invest; that frequently the agents of the company in the field would write letters and send telegrams to Menefee and LeMonn requesting that a certain kind of letter or telegram be sent said respective agents, which said letters would mention the proposed advancement in the price of stock, and would contain other information calculated to induce the pros-

pective purchaser to make haste in making the said investment, and that the defendants Menefee and LeMonn upon receipt of such telegraphic and written requests from the agents in the field would, as a matter of custom, immediately comply with the request made by said agent: It was further proven that for the purpose of inducing prospective purchasers to purchase the stock of the said corporation, that the defendant Menefee and the defendant LeMonn caused to be created a board known and designated as a Board of Advisers, composed of a large number of stockholders of the said United States Cashier Company who were prominent in business circles and that the list of these names was published by Menefee and LeMonn and sent broadcast all over the country as an inducement to the prospective purchasers to purchase the stock of the United States Cashier Company.

That in a number of instances a prospective purchaser would be by Menefee and LeMonn and the agent in the field promised and given a place on this Advisory Board as an inducement for the purchase of stock. That in a number of instances, the defendant Menefee and the agent in the field would cause to be issued to the purchasers of said stock who thus secured places upon the Advisory Board, special contracts, in which the purchaser of said stock would be by the United States Cashier Company promised an earlier dividend than the other holders of said stock, and all this was done without the knowledge or consent of any of the other stockholders of the United States Cashier Company. It was further proven that the duties of the Board of Advisors were

purely nominal, and that in reality the only purpose in creating such Board of Advisors was to induce a large number of men to believe that said Board of Advisors actually had some control over the affairs of the United States Cashier Company; it was further proven that many of the members of the so-called Advisory Board whose names were so published and used did not know of their membership upon said Board until after the indictment in this case had been made public. There was, however, no evidence whatsoever introduced at the trial that the defendant Gernert took any part in the sending of any of said telegrams or letters or had anything to do with the creation of the Advisory Board or the issuance of said preference contracts, or, in fact, had any knowledge of the existence of any of said things other than that evidence herein in this Bill of Exceptions specifically set forth.

And the plaintiff offered evidence tending to prove that in pursuance of the said conspiracy and to effect the object thereof, the defendants B. F. Bonnewell, Frank Menefee, and F. M. LeMonn committed each, every and all of the overt acts that are mentioned, specified and stated in the indictment in the manner and at the several times and places respectively alleged and stated in said indictment.

The plaintiff offered evidence which was received and which tended to prove that during all of the times stated in the indictment the Portland Oregonian, The Oregon Daily Journal, and The Evening Telegram were newspapers published and issued daily and regu-

larly at Portland, in Multnomah County, Oregon; that during said times said newspapers and each thereof had a circulation of more than 25,000 and that more than 25,000 copies of said papers and each thereof were, during all of the times stated in the indictment, daily and regularly transmitted through the agency of the postoffice department at Portland, Oregon, to more than 25,000 subscribers located in all parts of the United States; that the defendant, Frank Menefee, and the defendant, F. M. LeMonn, inserted in said newspapers, and each, every and all thereof, the following hereinafter described advertisements of the United States Cashier Company, and copies of said papers from the files of said newspaper offices were introduced in evidence by the plaintiff. Each of said newspapers containing said advertisements displayed the names of all of "the defendants" and the defendant Thomas Bilyeu and the defendant O. E. Gernert, as officers of said corporation, namely, the United States Cashier Company. The advertisements referred to are as follows:

Government's exhibit No. 17 was page 9 of the issue of the Oregon Daily Journal of date October 30, 1910. This was a display advertisement containing two cuts of machines, model No. 1 being the Bilyeu cashier, and model No. 2 being the Potter cashier. The advertisement contained the statement that the "value of the patent rights for the Bilyeu Automatic cashier for the United States alone is almost priceless," and an invitation was offered the public to purchase the stock.

Government's exhibit No. 18 is page 7 of the Oregon Daily Journal of date November 20, 1910, displaying a similar advertisement as shown in Government's exhibit No. 17.

Government's exhibit No. 19 is page 3 of the issue of the Oregon Daily Journal of date November 27, 1910, containing substantially the same advertisement as Government's exhibit No. 17, with the exception that the announcement is made that the stock "will positively advance ten per cent on the 6th day of December, 1910."

Government's exhibit No. 20 is page 18 of the issue of the Oregon Daily Journal of date December 1, 1910, containing an advertisement substantially the same as the advertisement shown in Government's exhibit No. 19.

Government's exhibit No. 21 is page 10 of the issue of the Oregon Daily Journal of date December 5, 1910, which is substantially the same advertisement as Government exhibit No. 17, with the exception that the statement is made therein that the company will pay one hundred per cent.

Government's exhibit No. 23 is page 13 of the issue of the Oregon Daily Journal of date June 23, 1911, showing an advertisement substantially the same as Government's exhibit No. 17, with the exception that the statement is made that the company will pay one hundred per cent annually.

Government's exhibit No. 24 is page 12 of the issue of the Oregon Daily Journal of date June 27, 1911,

showing an advertisement substantially the same as Government's exhibit No. 17.

Government's exhibit No. 25 is page 15 of the issue of the Oregon Daily Journal of date June 29, 1911, showing an advertisement substantially the same as Government's exhibit No. 17.

Government's exhibit No. 26 is page 12 of the issue of the Oregon Daily Journal of date June 30, 1911, containing an advertisement substantially the same as shown in Government's exhibit No. 17.

Government's exhibit No. 27 is page 12 of the issue of the Oregon Daily Journal of date October 17, 1911, which advertisement is substantially the same as Government's exhibit No. 17, and in addition thereto the following statements are contained therein:

"AT LAST"

**"A CASH REGISTER, ADDING
MACHINE, AND CHANGE COM-
PUTER ALL IN ONE."**

"Don't fail to see it in actual operation.

"Demonstrations at 266 Stark Street—Open evenings.

Followed by a general description of computing machine and its functions.

References to millions made by Cash Register and millions made by Adding Machine people.

The Change Computing Machine of United States Cashier Co. greater than either of these.

Giving figures of estimated profits.

Giving partial list of officers, advisory board, and directors.

Urging immediate investment because stock positively advanced to \$20 in a few days, and this is the last opportunity to buy at \$15 per share.

“The change-computing machine alone is sufficient to return the original investors tremendous profits.

“In addition to change-computing machine, the United States Cashier Company owns and controls four other equally wonderful and equally essential machines, viz.—the Bank Cashier, also a lightning change-maker; a currency-paying machine, also a new style adding machine. Any one of the above machines insures big returns, and future profit of the United States Cashier Company, owning and controlling as it does patents of five such marvelous machines, is impossible of calculation.”

Government's exhibit No. 31 is page 15 of the issue of the Evening Telegram of date November 17, 1910.

Government's exhibit No. 32 is page 10 of the issue of the Evening Telegram of date November 19, 1910.

Government's exhibit No. 33 is page 5 of the issue of the Evening Telegram of date November 23, 1910.

Government's exhibit No. 36 is page 5 of the issue of the Evening Telegram of date December 5, 1910.

Government's exhibit No. 37 is page 5 of the issue of the Evening Telegram of date March 11, 1911.

Government's exhibit No. 38 is page 13 of the issue of the Evening Telegram of date June 21, 1911.

Government's exhibit No. 39 is page 9 of the issue of the Evening Telegram of date June 26, 1911.

Government's exhibit No. 40 is page 11 of the issue of the Evening Telegram of date June 28, 1911.

Government's exhibit No. 41 is page 11 of the issue of the Evening Telegram of date June 30, 1911.

Each, every and all of the advertisements in the Telegram were substantially the same as those in the Oregon Daily Journal.

Government's exhibit No. 42 is page 11 of the issue of the Evening Telegram of date October 11, 1911. This advertisement is substantially the same as Government's Exhibit No. 17, and in addition thereto there appears therein the following statement:

**"METHODS OF HANDLING MONEY
WILL BE REVOLUTIONIZED!"**

**"EXTENSIVE PRODUCTION OF MAR-
VELOUS MECHANICAL BRAIN."**

**"PRODUCT OF UNITED STATES CASH-
IER COMPANY TO BEGIN IMME-
DIATELY."**

Two cuts of machines and automatic bank cash-
ier. Between the cuts, the following quotation:

**"Much has been said and written of the won-
derful machines which have been in process of per-**

fection by the United States Cashier Company for the past twelve months. Operations have now reached the stage where the extensive production of these wonderful machines commences immediately and deliveries will be made in about 90 days. They promise to outrival the cash register, adding machine, and typewriter in usefulness. In fact, will revolutionize the present systems of handling money. This is a broad statement, but one that is amply borne out by the machines themselves.

“For instance, the change-computing machine makes exchange mechanically, quickly, and accurately. Suppose you purchase \$4.25 worth of merchandise and tender \$10 in payment. All that is necessary is to depress the keys representing the amount purchased and the amount tendered, pull the lever, and the machine pays \$5.75, the exact change. The operation is completed quicker than any human calculator can ever hope to do it, besides being absolutely correct. In addition a visible permanent record is made of both transactions, besides totaling each sale as made.

“It is safe to state that there never was a machine placed on the market for which there is such a great actual need.

“The change-computing machine alone is sufficient to return the original investors tremendous profits.

“In addition to the change-computing machine, the United States Cashier Company owns and con-

trols four other equally wonderful and equally essential machines, viz.—the Bank Cashier, also a lightning change-maker; a currency-paying machine, also a new style adding machine. Any one of the above machines ensures big returns, and the future profit of the United States Cashier Company, owning and controlling as it does patents of five such marvelous machines, is impossible of calculation.

“RECORD OF THE UNITED STATES CASHIER COMPANY UNPARALLELED.

In all respects the record of the United States Cashier Company stands unparalleled. The United States Cashier Company has been financed in less time than any other of the present day great successes. Since the company was first launched a little over a year ago, the leading bankers, business men, and capitalists of this city and the Pacific Coast have subscribed for a sufficient amount of stock to assure its success. Today the assets of the United States Cashier Company (not including patents, which are conservatively valued at not less than \$500,000) are over \$400,000, including real estate, factory, equipment, machines, material, cash, and bills receivable.

“The only stock remaining unsold is 15,000 shares which are held in escrow by one of Portland’s leading banks for the payment of the original patent rights. The United States Cashier Company has

the right to redeem this stock any time within twelve months.

“On or before November first, the United States Cashier Company stock will positively advance to \$20 per share. The last block of stock offered was eagerly purchased by keen business men at \$15 per share.

“Accordingly, instead of waiting to redeem this patent stock when it is due twelve months from now, the Board of Directors have decided to offer it now, while it lasts, subject to previous reservation, at \$15 per share. This will enable those who have recently made application for stock to be taken care of and will also afford a large manufacturing fund ample to meet any contingencies that might arise.”

Government's Exhibit No. 43 is page 13 of the issue of the Evening Telegram of date October 19, 1911, containing an advertisement substantially the same as shown in Government's Exhibit No. 17. In addition thereto the following statement is made:

“The change-computing machine alone is sufficient to return original investors tremendous profits.

“In addition to the change-computing machine, the United States Cashier Company owns and controls four other equally wonderful and equally essential machines, viz.,—the bank cashier, also a lightning change-maker; a currency-paying machine, also a new style adding machine.

“Any one of the above machines insures big returns, and the future profit of the United States Cashier Company, owning and controlling as it does five such marvelous machines, is impossible of calculation.

“Stock positively advanced to \$20 in a few days.

“Last opportunity to buy at \$15 per share.

“Remember: Only a few shares remain.

“Time to act is now; the first thing tomorrow morning.

“Call, phone, write, or wire.

United States Cashier Company.

“Manufacturers of automatic, computing, change-making, recording, coin-paying machines, and adding machines.”

Government's Exhibit No. 44 is page 10 of the issue of the Evening Telegram of date October 30, 1911, which contains an advertisement substantially the same as shown in Government's Exhibit No. 17, with the following addition:

“ONLY ONE DAY MORE

**“LAST OPPORTUNITY TO BUY UNITED
STATES CASHIER COMPANY
STOCK AT \$15.00.”**

**“POSITIVELY ADVANCES TO \$20 NO-
NOVEMBER 1.”**

Containing a description of the computing machines, automatic bank cashier, change-computing,

currency-paying, lightning change maker, and adding machine, and the statement regarding the breaking of all records by the United States Cashier Company in its financing, and containing following quotation, underscored:

"The United States Cashier Company not only controls one of the above machines—any one of which would return big profits, but owns and controls patents and rights to all of them."

"REMEMBER: Only one day more at \$15. Stock positively advanced to \$20 November 1.

"Call, Write, or Wire."

Government's Exhibit No. 47 is page 9 of the issue of the Morning Oregonian of date March 11, 1911.

Government's Exhibit No. 48 is page 15 of the issue of the Morning Oregonian of date June 22, 1911.

Government's Exhibit No. 49 is page 5 of the issue of the Morning Oregonian of date June 27, 1911.

Government's Exhibit No. 50 is page 9 of the issue of the Morning Oregonian of date June 29, 1911; said four last mentioned exhibits and each thereof contained an advertisement of the United States Cashier Company substantially the same as shown in Government's Exhibit No. 17.

Government's Exhibit No. 51 is page 11 of the issue of the Morning Oregonian of date October 8, 1911, which shows an advertisement substantially the same as Government's Exhibit No. 17, with the following addition:

**"METHODS OF HANDLING MONEY
WILL BE REVOLUTIONIZED."**

"EXTENSIVE production of marvelous mechanical brain—the product of the United States Cashier Company—to begin in about 90 days."

"RECORD OF UNITED STATES CASHIER COMPANY UNPARALLELED."

"In all respects the record of the United States Cashier Company stands unparalleled. The United States Cashier Company has been financed in less time than any other of the present day great successes. Since the company was first launched a little over a year ago, the leading banks, business men, and capitalists of this city and the Pacific Coast have subscribed for a sufficient amount of stock to assure its success. In fact, staid banks which never before endorsed anything of this nature, lent their enthusiastic support in most strongly worded testimonials **IN WRITING**. Today the assets of the United States Cashier Company (not including patents) are over \$400,000, including real estate, factory equipment, machinery, machines, material, cash, and bills receivable."

"ONLY 15,000 SHARES REMAIN."

"The only stock remaining unsold is about 15,000 shares which are held in escrow by one of Portland's leading banks for payment of the original patent rights."

“The United States Cashier Company has the right to redeem this stock any time within twelve months.”

“Much has been said and written of the wonderful machines which have been in process of perfection by the United States Cashier Company for the past twelve months. Operations have now reached the stage where from present indications extensive production of this wonderful machine will commence in about 90 days. They promise to outrival the cash register, adding machine and typewriter in usefulness. In fact, will revolutionize the present system of handling money. This is a broad statement, but one that is amply borne out by the machines themselves.

“The computing machine alone is sufficient to return original investors of the United States Cashier Company tremendous profits. \$100 invested in National Cash Register stock returned \$42,780.

“In addition to the computing machine, the United States Cashier Company has perfected and patented four equally wonderful and equally essential machines, viz.—bank cashier, which permits paying checks rapidly by bank cashiers, as well as keeping a record of each transaction; a machine that banks have needed and wanted for years. Also a lightning change maker for pay-as-you-enter cars, theaters, etc., a currency paying and computing machine which pays paper

money, gold, and silver, with equal facility and correctness. Also a new style adding machine, which is more flexible than any now on the market and has less parts. Bank clerks cannot make mistakes. Paying tellers are saved hours of time each week. Department stores will quicken their service; merchants will be able to stop losses now impossible. In short, the whole system of handling money will be revolutionized.

“Any one of the above machines insures big returns, and the future profit of the United States Cashier Company, owning and controlling as it does five such marvelous machines, is impossible of calculation. The patent rights are virtually priceless and the demand for such money-saving, labor-saving devices is unlimited.”

Government's Exhibit No. 52 is page 6 of the issue of the *Oregonian* of date October 15, 1911, containing an advertisement in which the following statement appears:

“The change computing machine alone is sufficient to return original investors tremendous profits.

“In addition to the change computing machine, the United States Cashier Company owns and controls four other equally wonderful and equally essential machines, viz.—the bank cashier, also a lightning change maker; a currency-paying machine, also a new style adding machine. Any one of the above machines insures big returns, and the future profit of the United States Cash-

ier Company, owning and controlling as it does, five such marvelous machines, is impossible of calculation."

Government's Exhibit No. 54 is page 12 of the issue of the Oregonian of date October 29, 1911, containing an advertisement substantially the same as Government's Exhibit No. 44, with the following addition:

"The United States Cashier Company not only controls one of the above machines,—any one of which would insure big profits, but owns and controls patents and rights to all of them."

Each of the exhibits containing said advertisement showed full page display advertisements.

And the plaintiff offered testimony which was received and which tended to prove that the American Cash Record Company was a corporation organized and existing under the laws of the state of Washington, and that during all of the times mentioned, specified and stated in the indictment the defendant, Thomas Bilyeu, was the president and a director thereof, and was the owner of one-fourth of its capital stock; that the United States Cashier Company, on September 28, 1910, purchased from the American Cash Record Company applications for patent No. 555,552; No. 519,489 and No. 522,240, for a purchase price of \$200,000 in cash and \$60,000 of the stock of the United States Cashier Company; that from time to time thereafter and up to and including the year 1913, the United States Cashier Company made many cash payments to the American Cash

Record Company and to the defendant Thomas Bilyeu, and that the defendant Bilyeu, during these years, received in cash from the United States Cashier Company, on account of said contract, more than the sum of \$50,000; that in November, 1911, the United States Cashier Company purchased from the defendant Thomas Bilyeu certain patent rights covering the same applications for the republic of Mexico for the sum of \$15,000, but that the United States Cashier Company never did anything with any of these rights; that in June, 1912, the United States Cashier Company purchased from the defendant Bilyeu and one Overlin the rights to a currency machine that had been built by Overlin. The consideration of this purchase was that the company was to sell for Bilyeu and Overlin 1600 shares of stock owned by them and to pay them for the stock at the rate of \$12.50 per share.

There was evidence tending to show that the defendant Bilyeu saw the advertisements in the Oregonian, Journal and Telegram heretofore referred to in this bill. The plaintiff offered evidence tending to prove that upon one occasion the defendant Bilyeu had assisted in the sale of the stock of the United States Cashier Company and had represented to the purchaser that the company owned the patents to all the machines which it was advertising and selling. The plaintiff offered evidence tending to prove that during all of the times mentioned in the indictment the defendant Bilyeu was a duly licensed and regularly admitted patent attorney.

At the conclusion of all the testimony offered by both the plaintiff and "the defendants," the court directed a verdict in favor of the defendant Bilyeu.

The plaintiff offered evidence which was received and which tended to prove that the defendants Menefee and LeMonn, for the purpose of inducing prospective purchasers to purchase the stock of the United States Cashier Company had written letters to said prospective purchasers in which the statement was made that the patent office at Washington, D. C., could not give the company a single citation wherein the patents of the United States Cashier Company were infringing on any other patents previously granted and that the United States Cashier Company had made extensive research by the ablest patent attorneys in Washington, D. C., and that said patent attorneys had assured the company that they had full protection for all time to come;

And the plaintiff offered testimony which was received and which tended to prove that prior to the time that said last mentioned letters were written and that during all of the times thereafter, John F. Robb, of Washington, D. C., was the patent attorney for the said United States Cashier Company; that prior to the time that Menefee and LeMonn had written the said letters stating that the patents of the United States Cashier Company did not infringe any prior issued patent, and that the patent office at Washington, D. C., could not give the United States Cashier Company a single citation wherein the patents of the said company

would infringe on any other patents previously granted, and that the patent attorneys for the United States Cashier Company had assured it that it had full protection for all time to come; that the defendants Menefee and LeMonn had received from the said patent attorney, John F. Robb, written notice that certain prior issued patents, one issued to a man by the name of Lindeloff and two others issued to the National Cash Register Company, would be infringed by the applications for patents of the said United States Cashier Company, and that the application of the United States Cashier Company for the patent to the Bilyeu cashier and the application of said company for the patent to its computing machine would infringe said prior issued patents;

And the plaintiff offered testimony which was received and which tended to prove that during the times mentioned, stated and specified in the indictment, the United States Cashier Company received in cash from the said INVESTORS and many and divers other persons on account of the sale of capital stock to said persons in cash the sum of \$760,165; that it had disbursed over \$400,000 to its agents as commissions upon the sale of its capital stock; that the defendant F. M. LeMonn received a commission of ten percent. of all amounts received for the sale of said capital stock; that the defendant Frank Menefee received a commission of ten per cent upon said sales; that to the agent making the sale of said stock there was by said corporation paid a further and additional commission of thirty per cent on account of the sale of said capital stock; that approx-

imately \$1,500,000 in cash and property were received by the said United States Cashier Company during said times on account of the sales of its capital stock; that no dividend was ever declared to any of the stockholders of said corporation and that the company was never in a position to declare or pay any dividend; that each, every and all of "the defendants" received large sums of money from the said United States Cashier Company over and above all of the amounts paid in to said company by them and each of "the defendants" made large profits during all of said times in selling and disposing of their own personal stock of said corporation.

As to the defendant O. E. Gernert, the testimony ~~hereinbefore~~ set out in this Bill of Exceptions was the sole and only testimony offered by the Government relating to said defendant, and except as ~~hereinbefore~~ shown there was no other evidence, words or testimony of any kind or nature offered by the Government or by the defendant Gernert tending to prove, or from which inference might be drawn from connecting of the defendant O. E. Gernert with the alleged conspiracy set out in the indictment, or that tended to prove defendant O. E. Gernert knew, had knowledge of, or believed at any time prior to the finding of the indictment that the United States Cashier Company did not own the patents to the change computing machines, lightning change maker, currency paying machine, or the new style adding machine, or that the defendant Gernert had knowledge or information of, or believed that the company was not engaged in the business of manufacturing or

selling its machines, or any thereof, or that its sole business was to sell and dispose of shares of its capital stock, or that the defendant Gernert knew, had information of, or believed that the shares of stock in said corporation were of very little value or were practically of no value whatever or were practically worthless; or that the defendant Gernert at any time mentioned in the indictment, knew, had information of, or believed that no dividends would ever be declared to paid to the investors in the capital stock of said corporation or that the defendant O. E. Gernert knew, had information of, or believed that none of the investors in the capital stock of said corporation would ever receive any dividend whatsoever; or that the defendant O. E. Gernert knew, had information of or believed that the Company was never the owner nor in the possession of bona fide orders for the purchase of the machines of the United States Cashier Company; or that the said defendant O. E. Gernert knew, had information, or believed that the financial condition of the Company was not excellent; or that the same was absolutely insolvent; or that the said defendant Gernert knew, had information, or believed that the assets of the United States Cashier Company were of much less value than its liabilities; or that the defendant O. E. Gernert knew, had information of, or believed that a very large amount of the shares of stock of said corporation were represented by the various and several defendants as the property of the corporation and consisted of shares of stock owned by the defendants Menefee, LeMonn, Bilyeu, Gernert, Bonnewell, Todd, Hunter, Hopson, Muraine and Campbell,

and that the sums of money and property received on account of the sale thereof would be appropriated by the said defendants, and that none of the sum of any part thereof, would be paid into the treasury of the corporation, or that the defendant Gernert knew, had information or believed that none or any of the defendants were at any time on account of the financial condition of the Company, justified in raising or increasing the selling price of the stock of the Company; or that the defendant Gernert knew, had information, or believed that each, every or any person who should purchase the shares of stock of said corporation, would suffer a loss on account of said transaction of all or any of the sums of money paid by them for said stock; or that the said defendant Gernert at any time published false or untrue written or printed statements of the liabilities owed by said corporation; or as to the financial condition of the Company; or that he knew, had information, or believed that the statements of the financial condition of the Company or of the liabilities owned by it, were false or untrue in any particular; or that the said defendant Gernert knew, had information or believed that said statements as to the financial condition of the Company should or would be false or untrue; or that the defendant Gernert knew, had information or believed that such financial statements falsely placed the assets of the corporation at sums greatly in excess of the true value of the assets of the corporation; or that said financial statements should, would or did state amounts as to the liabilities of the corporation greatly less than the true amount of said liabilities; or that the

defendant Gernert knew, had information or believed that more than 25% of all sums of money paid by investors for the purchase of stock in said corporation would be, or were appropriated by the defendants to their own use and gain; or that the said defendant Gernert knew, had information or believed that the various increases in the price of the capital stock of the corporation, were not justified by its financial condition and its prospective value.

Whereupon C. B. Clark being called as a witness for the Government, being first duly sworn, testified as follows:

Direct Examination by Mr. Reames:

I live in Cashmere, Washington, and am a farmer by occupation. I have lived in Washington for seventeen years. In December, 1911, I met Mr. Sewall, an agent of the United States Cashier Company, and the defendant O. E. Gernert; Gernert had a machine with him and he was demonstrating it in one of the banks and I happened to be in the bank and watched him demonstrate it, and listened to the people ask certain questions about the working of the machine and heard Mr. Gernert explain it. I took part in the conversation for approximately a half an hour and then I engaged in conversation with Mr. Sewall. That is the only talk I had with Mr. Gernert at that time. I think Mr. Gernert told me that he was the assistant sales manager for the United States Cashier Company. At that time I bought twenty shares of stock at twenty dollars per share, and took an

option on an additional eighty shares. In June, 1912, I attended a stockholders' meeting of the company at Portland. I took lunch with Mr. Gernert and there he made a proposition something like this: That we could go in together and handle a thousand shares of the stock; a thousand shares, and in doing that get the agency of the state of Washington for selling the machines after they were manufactured, and that was the—the arrangement was completed during the day. I don't know whether—I don't think it was completed during lunch, but it was completed after the meeting in the afternoon; it was completed—that is in there it was. After the meeting was over, I went up to the main office and talked with Mr. Menefee a few minutes in the office, in his office; there were present in the office Mr. Gernert, Mr. Menefee and myself. I had bought eighty shares of stock and had given a note for \$1600 to the company for this eighty shares; I had first bought twenty shares for which I paid \$400 cash, and then had bought eighty shares for which I had given a note for \$1600. The note was due in July 1912, and in order to go in with Mr. Gernert on the thousand shares I felt as though I needed more time on the \$1600, and that was the talk with Mr. Menefee. He said if I done that, he would extend the note for me for the \$1600, and that is all the talk with Mr. Menefee at that time. The request I made was that if I took a part in the agency I could not raise the money for the \$1600 note at this time.

The Government offered, and there was received in evidence Government's Exhibit 242, being a letter of

date July 12, 1912, written by Gernert to the witness, the witness having testified that he received the letter through the mails.

Witness, continuing:

This letter had reference to the conversation that I had had with Mr. Menefee and Mr. Gernert in Portland. I saw Mr. Gernert in August, 1912, at Cashmere, Washington. He came over there and spent three or four days trying to sell some stock. He sold some, but I don't know just how much, a small amount. Then he went on back to Seattle to—I am a little ahead. Before he went back to Seattle we made arrangements—I made arrangements to raise \$2500.00 to pay for one hundred shares of the stock, and he said he had another man in mind that would take twice that amount, and he would take the same amount that I took, making \$10,000. And then he could go ahead with the moving stock—that is the re-selling of the stock to take care of the balance of the agency; the total amount that was to be paid for the stock by all of us was to be \$30,000; we raised the \$10,000, and Gernert thought perhaps he could sell the stock to take care of the balance or resell it rather. We would take hold of the stock then.

Q. Now, what was said by Mr. Gernert, if anything, as to what was to be done by the company with this money, and what stock it was that you were buying?

A. It was company stock, and the money was to be used by the company. He didn't outline in

detail what it was to be used for, but it was to be used by the company, as I understood it.

Q. Now, later, after that, did you have any conversation with Mr. Menefee about that transaction?

A. Well, quite awhile later, yes.

Q. How much later?

A. I think the last of November.

Q. Of what year?

A. The same year.

Q. Now, when you had that talk with Mr. Menefee about that, where was the talk, and what was said between you and Mr. Menefee about that transaction?

A. It was at the company's office in Portland. There is some little explanation before that. When Mr. Gernert left Cashmere, I hadn't heard from him from that time. It seems to me like I did write him a letter between that and the time I seen Mr. Menefee, but I won't be sure as to that. And if I did, I must have received an answer from him, which I can't say here now, but it does seem to me like I wrote him and got an answer, but that is all I had from Mr. Gernert; he had gone on a trip somewhere, seems to me like up into Canada, and he wrote me that he couldn't do anything with the business at that time; he was engaged in something else that was pushing him, and when he got back from there, he would go ahead with this business. Then it came

on towards fall, and nothing being done, I came down to Portland to see Mr. Gernert. He wasn't in Portland, but I seen Mr. Menefee. I asked him about it, and he said for some reason Mr. Gernert had issued me, or transferred some of his own stock to me instead of the company's stock, which left me out of the agency.

Q. Well, what was said about how it was to be straightened up?

A. Well, I requested that something be done, and Mr. Menefee said at that time he could do nothing, and I didn't get in touch with Mr. Gernert until the stockholders' meeting in the spring; and I came down to the stockholders' meeting in the spring, and there I seen Mr. Menefee after the meeting was over, and we had another talk about it. In the meantime, I hadn't paid the \$1600, so I requested that he do that much—that he arrange somehow and return that note to me for that part of the twenty-five hundred that I had paid in, that I didn't feel like leaving in the company, and he said he would do his best to adjust that. He questioned just what he could do. He was only one of the directors, and he would have to bring it before the board.

At the time I had this transaction with Mr. Gernert, I gave the mortgage to Mr. Gernert; he got the money of a party in Seattle; the amount was \$2500 and the mortgage is still a lien upon my property. Mr. Gernert has never taken it up in any way or straightened it up,

and I have never been in touch with Mr. Gernert since that time.

Q. Here is a receipt dated August 9, 1912, which I would ask you to examine, and state whether or not that is a receipt that Mr. Gernert gave you for the \$2500?

A. Yes, sir.

Mr. Maguire: No objection to that.

Receipt offered in evidence, marked "Government's Exhibit 243," and read as follows:

\$2500.

August 9, 1912.

Received of C. D. Clark the sum of Two Thousand Five Hundred Dollars (\$2500) Payment for 100 shares of issued fully paid and non-assessable stock of United States Cashier Company, of Portland, Oregon, which is purchased from me this 19th day of August, 1912, subject to contract.

O. E. Gernert, ~~Agent~~

By.....Representative.

Q. Now you testified that the money that you paid was to go into the company for the purpose of building up the company, or to be used by the company. I notice that on the receipt that is signed, the word "Agent" is crossed out. I would like to have you examine that and tell the jury if you know how that came to be done, and when you noticed it.

A. As far as the crossing out of the agency part, I don't know anything about, although I do know

that Mr. Gernert was working or at this time we were working, seemingly independent of the company. It would seem that. This stock was to be—we were to take hold of this stock ourselves, and be responsible to the company for the stock.

Q. But what was said by Mr. Gernert as to what would be done with the money that you were putting up and paying?

A. It was to be paid into the company.

Q. Here is a letter of date August 19, 1912, which I wish you would examine and tell the jury how the letter came into your possession.

A. I received that through the mail.

Letter offered in evidence, received without objection, marked "Government's Exhibit 244," and read as follows:

UNITED STATES CASHIER CO.

August 19, 1912.

Mr. C. B. Clark,
Cashmere, Wash.

Dear Sir:

Enclosed we hand you certificate Number B. 5051 for one hundred shares of the capital stock of this company, payment for which you made to Mr. Gernert. You probably understand that this is the time of the year when it is most difficult to make sales of any property, and Mr. Gernert, as well as our salesmen in the field, report financial conditions

in their localities such that the selling of stock is a very hard proposition. Mr. Gernert advises us, however, that he expects to go to Toppenish, Washington, the first part of this week, and he has hope of placing quite a considerable block of stock there. The farmers in Toppenish should be realizing on their crops by this time, and if so, they will undoubtedly be more easily interested than they would otherwise. Mr. Gernert will doubtless keep you advised as to his progress.

Regarding the extension of time on your \$1600 note, we beg to advise that it is agreeable to us to make an extension of six months from the date of maturity of the old note, but will ask you to pay the interest to date at maturity, and give us a new note, which will enable us to have our records in a more satisfactory condition. Please therefore send us a remittance for \$64.00, and sign and return the enclosed note, and we will cancel and return to you the old one.

With best wishes, we beg to remain,

Yours faithfully,

Frank Menefee, President.

Witness continuing:

In regard to letter of date August 19, 1912, "Government's Exhibit 244," requesting a remittance of \$64, I remitted this amount to the company, and gave a new note for the sum of \$1600. Later I was notified by

Mr. Mears, one of the directors of the company, that the note was in his possession. The note has not yet been paid.

Whereupon the government offered, and there was received in evidence without objection "Government's Exhibit 245," the witness identifying the letter as one having been received by him through the mails.

Seattle, Washington, Dec. 28, 1914.

Frank Menefee
Strader Hotel,
4th and Marion.

Mr. B. Clark,
Cashmere, Washington.

Dear Sir:

Your letter of the 31st inst. has just reached me this morning here. It was addressed to Portland and was forwarded to me here the same day I left here to go to Portland to spend Christmas with the wife and babies, so I did not get it till my return here this A. M.

While I cannot feel that any of my actions with the affairs of this company were lacking in any respect in good faith and fairness, still the way matters have gone, I have felt, and do feel, that you ought not to have to pay the note that you gave. I have suggested all the while that you must not be pressed for payment, and I will write at once to Mr. Mears, and will take it up personally on my first

trip to Portland, which will be within the next few days, and can promise you that your note will be returned to you.

I know that matters have been most disappointing to all of us, and I am the heaviest loser of any one in every way. I have made nothing at all out of it, as everything I have has gone back into the company, and if we can be let alone, we believe that we will yet make good, but if we are to be harrassed and jumped upon at every turn, it all hurts the stockholders and the company, and only operates to prevent making a success. I believe you know and feel *and feel* that we have done the best we could and had not all this trouble come on that was started by Hume, things would even now be looking entirely different.

Kindly write me at the above address on receipt of this.

Yours faithfully,

Frank Menefee.

Witness continuing:

The note has never been returned to me. Referring again to the first talk I had with Mr. Gernert in December, 1911, at Cashmere, Washington, I identify the Bilyeu cashier as the machine that Mr. Gernert had with him at that time.

Cross examination by Mr. Maguire:

Mr. Gernert was in the bank demonstrating the machine and I heard him tell the people what the machine

would do and saw him demonstrating it. I did not see Gernert again until June, 1912, at which time I had a conversation with him relative to getting an interest in the state agency for the sale of these machines in the state of Washington.

Q. You understood that Mr. Gernert could obtain the agency by payment to the company of quite a large amount of cash, didn't you, something like \$25,000?

A. Yes, sir.

Q. That was the agency for the sale of the machines when they should be put upon the market?

Q. And the proposition then that was put up to you was that you could have a share in that agency by the payment of how much money?

A. Yes, sir.

A. Well, I was to start with \$2500, and if there was more required later, I might be obliged to put up more if we couldn't make the stock move, but at that time it was \$2500.

Q. \$2500. That money was to be paid to the company, as you understood it, for that agency? That is, for the state of Washington, with a whole lot more money Mr. Gernert and some one else should put up?

A. Well, was to be paid for stock, I might say, and through the stock we got the agency.

Q. Well, weren't you to pay for the agency by cash?

A. Well, it wasn't—

Q. Let me amend that—well, go ahead and explain.

A. Well, I was going to say I didn't understand we were paying for the agency of the company. We were paying, seems like, enough for the stock to get the agency, but of course the agency of the company with the stock.

Q. Agency of the company with the stock?

A. Yes, we got that by handling that stock, taking that stock from the company.

Q. How much stock was it all three of you were to subscribe for?

A. A thousand shares.

Q. A thousand shares?

A. Yes, sir.

Q. How did this \$25,000 come into the matter?

A. Well, we were to pay \$25,000 for the thousand shares of stock; we were to get that much money into the company, but we were to have a little time to get it in after we put up the first \$10,000.

Q. Now, let me refresh your memory on that Mr. Clark; wasn't the stock issued to you by Mr. Gernert, so that there would be some security for the company in this arrangement, and it was then understood that you and Mr. Gernert should go out and sell this stock in order to get the money back to put into the sales agency?

A. Yes, I was to help Mr. Gernert what I could to resell the stock, what was sold in my locality, yes—the amount that I was to—the part that I was to take, yes, sir.

Q. Now, this note for \$1600, that didn't have anything to do with this transaction at all? That was the first transaction that you had, the stock that you bought?

A. That is all.

Q. And that note, as I understand it, is held by the company today?

A. Yes, sir. Well, yes, with some of the company, yes, sir.

Q. Now, as I understand it, this is the receipt that you got from Mr. Gernert (Government's Exhibit 245).

A. Yes, that is the receipt.

Q. Mr. Gernert signed this receipt and gave it to you?

A. Yes, sir.

Q. And then you turned it over to whom?

A. I held it.

Q. I see. And it has been in your hands—

A. Ever since.

Q. All the time since then?

A. Yes, sir.

Q. Now, the United States Attorney was asking you about these inkmarks through the word

“agent,” and whether or not that was on there at the time you got it. Do I understand you to testify that these ink lines through that word were not on there at the time you got it?

A. No, sir; I didn't. They were there, and no one else ever put them there afterwards, because they were put up in my books, and nobody else ever had hold of them.

Q. Then, as I understand, this receipt is in the same condition now as it was when Mr. Gernert turned it over to you?

A. Yes, sir.

Q. And you read it at that time?

A. I didn't pay any attention to that agency mark.

Q. I didn't ask you that.

A. No.

Q. I asked you whether you read the receipt.

A. Oh yes, I looked over the receipt, and laid it away, yes, sir.

Q. Well, now, you understood that Mr. Gernert, in order to get the money to buy this agency for the sale of the machines, from the company, would have to sell a large amount, or a portion, at least, of his personal stock, didn't you?

A. Well, it would be our personal stock after it was transferred from the company, or in some way it had to be transferred from the company to us.

We had to handle the stock independent of the company.

Q. Yes. Now, you were to pay, you say, \$25 for this stock?

A. Yes, sir.

Q. And how much were you to sell it at?

A. We were allowed to sell it at \$30. That was the price that stock was selling at at that time.

Q. Well, these 100 shares which you obtained, you understood that in addition to that, Mr. Gernert had to raise his portion of the money too, didn't you?

A. Oh, yes, yes, sir.

Q. And you understood that that was to be raised by the sale of Mr. Gernert's personal stock, didn't you?

A. I don't know as we talked that. I don't know that I understood that exactly that way. We didn't go into details much about the selling, or what stock—how the stock would be issued, or anything of that kind.

Q. Well, you understood that Mr. Gernert had put in a considerable amount of his own funds into the stock of the company—purchased stock of the company, didn't you?

A. Well, I understood that he had a considerable amount of stock in the company, yes, sir.

Q. And his money was tied up there?

A. Yes, sir.

Whereupon it was stipulated by and between the Government and "the defendants," and the defendant Bilyeu and the defendant O. E. Gernert that the books and records of the United States Cashier Company had been by the employees of said company correctly kept, and that they correctly, accurately and truthfully showed the financial transactions of the United States Cashier Company, and that all entries appearing therein were and are correct and accurate records and entries, that prior to the indictment all of these books and records were voluntarily by the defendant Menefee turned over to and delivered to Hiram S. House, an expert accountant for the Department of Justice, who had had possession of the same at all times between the date of said delivery and the date said books and records were produced in court; and

It was further stipulated that Mr. House would be permitted to testify concerning his examination of said books and records and the facts shown and contained therein.

Whereupon said Hiram S. House, having been called as a witness for the Government, and being first duly sworn, testified as follows:

I am an expert accountant for the Department of Justice and have held such position for over eight years. Formerly I was employed in several national banks as an accountant. I have had a great deal of experience in the examination of books, records and accounts. For more than the period of one year I have been engaged in mak-

ing a careful examination of all of the books and records of the United States Cashier Company and am able to answer any questions concerning what is shown in said books and records relative to any of the financial transactions of said company. The same statement is true of the individual and private books and records of the defendant Frank Menefee.

Witness continuing:

The books of the United States Cashier Company show that the witness C. B. Clark received certificate numbered 2741 of date December 9, 1911, for twenty shares of stock; the stub of the certificate shows that it was transferred from certificate numbered 2279, which stood in the name of Frank Menefee. None of these funds went into the treasury of the company in payment for that stock. The books and records show that certificate numbered 3705 was issued to Mr. Clark on March 5, 1912, for eighty shares of stock. The stub shows that this was transferred from a certificate belonging to Mr. Frank Menefee. The witness testified that the stock was the personal stock that Menefee had previously purchased from one E. F. Circus. None of this money went into the treasury of the company in payment for this stock. On August 19, 1912, certificate numbered 5051 for one hundred shares of stock was issued to Mr. Clark. The books and records show that this certificate was transferred from certificate numbered 4981, which stock in the name of Frank Menefee, Trustee, and none of this money went into the treasury of the company in payment for that stock. The personal books of Mr. Menefee show

that on August 22, 1912, he received from Mr. Clark \$64, which was credited to interest account on Menefee's personal books. The books and records of the United States Cashier Company show that no part of this sum of \$64 went into the treasury of the company; as shown by the books and records of the company, no part of the sum of \$2500 paid by Mr. Clark or paid through the agency of the Clark mortgage went into the treasury of the company.

Whereupon the Government offered and there was received in evidence without objection and marked as Government's Exhibit Number 290 a letter written by the defendant Frank Menefee at Portland, Oregon, on December 5, 1911, to the defendant Gernert at Cashmere, Washington. The following is a copy of said letter:

"Dec. 5, 1911.

Mr. O. E. Gernert,
General Delivery,
Cashmere, Washington.

My dear Gernert:

Your letter received and was very glad to hear from you, as I thought you, Murraine and Sewall were lost somewhere in the shuffle. As requested, I am herewith enclosing you certificates as follows:

C. R. Yener	25 shares
J. W. Zufall	10 "
E. L. Williamson	5 "
Hilda Brennan	5 "

W. A. Decker	5 shares
B. H. Gritzmacher	10 “
G. H. Moore	10 “
Jno. Scott	25 “
Lew Paramore	50 “
W. Harris	5 “

These certificates are taken care of by me out of my own stock, and therefore the entire settlement is due to me until such time as we get together and divide the matter.

Everything is going fine with the company. We closed up the deal with the Sioux Falls people for \$25,000 and got \$8,000 cash, the balance February and March. It is in such shape that I feel there is no doubt about it going through alright.

I also got a settlement with the people down stairs, and had it my way. I had to be a little more liberal with the city lot question than I should have been, but I got all of the stock released and made a new contract entirely. We owe them now less than \$50,000 all told, and under the new contracts the payments of that are scattered over until next July. Things have been going in the office in such shape that we have a nice little surplus of money on hand and yours truly is trying his best to take care of it. I am getting along much better than I expected for this month, and when the big collections come in in January, there will be nothing to it.

Cash in all of this paper you possibly can, and send in whatever reports you have as to the details,

direct to me, as I will take good care of it and we can divide the situation up any time we are ready.

Enc.

Yours faithfully,

FM:MM.

Whereupon the Government offered and there was received in evidence without objection a letter written by the defendant Frank Menefee at Portland, Oregon, on December 9, 1911, to the defendant Gernert at Cashmere, Washington. The letter was marked as Government's Exhibit number 292. The following is a copy of said letter:

"Dec. 9, 1911.

Mr. O. E. Gernert,
Cashmere, Washington.

My dear Gernert:

Your letter of the 7th inst. is duly received, and as requested, I am herewith enclosing certificates of stock as follows:

C. B. Clark, Cashmere, Wn.	20 shares
C. A. Henston, " "	15 "
Phil Churchill, Snohomish, Wash,	5 "
Hugo Dotzer, " "	10 "

You must send in remittances and settlement for this stock, as it is issued because I am having a hard time taking care of the stock that is going to make up these reissued certificates, and must have settlements as fast as possible. Of course, you understand I settle with you personally for one-third net, etc.

By the way, it might be well to state in this letter my understanding in regard to your business as I believe we have never had a memorandum in regard to it.

In brief, it is this: That this stock you are selling is to be settled with me personally, and that you are to receive a commission of twenty-five per cent for selling same, you to pay all of the men out of this amount, who may be working with you on the deal. Out of the balance, or \$15.00 per share, you are to turn in for one-third of it your own certificates, one-third of it is to belong to me, and the other third to Mr. LeMonn. Also the sales should be made as nearly as possible on a cash basis. The financing of the men of course is to be paid out of the first cash received, and then we are to wait our turn when the settlements are made on the subscriptions for which you have to take paper and can not cash it.

Mr. Murraine is in and of course he has been given to understand the twenty-five per cent commission, but he seems to have found out from you that this is private stock that we are selling, but thinks it is mostly mine. In fact, I have not indicated that any of your stock is to go in on the deal, or for that matter any other stock but mine.

Enc.

Yours faithfully,

FM:MM

Whereupon the Government offered and there was received in evidence without objection, and marked as

Government's Exhibit Number 291, a latter written by the defendant Gernert at Seattle, Washington, on December 14, 1911, to the defendant Menefee at Portland, Oregon. The following is a copy of said letter:

"Frank Menefee	Robert J. Upton,
Pres. and Gen. Mgr.	Secretary
O. E. Gernert,	F. M. LeMonn,
Asst. Gen. Sales Mgr.	Gen. Sales Manager
UNITED STATES CASHIER CO.	
Manufacturers	

(Picture)	(Picture)
Automatic Cashier	Automatic change com-
for banks, pay	puting machine
rolls, etc.	For Department and
	Retail Stores, etc.

AUTOMATIC COMPUTING
CHANGE-MAKING
RECORDING
COIN-PAYING MACHINES

(Picture)

Lightning change maker for theatres,
street cars, etc.

Portland, Oregon.

Seattle, Wash., Dec. 14, 1911.

Mr. Frank Menefee,
Portland, Oregon.

Dear Sir:

I have yours of the 5th and 9th instants. Sorry I could not answer before this, but we have been in

the hospital business for the past week. I was confined for several days, thought I had typhoid fever, but am feeling pretty good at present. Mr. Malt-house is laid up and has been for the past week with typhoid fever. I do not know what to do with the poor kid, who has not got any money and no friends. I am doing all I can for him toward paying his bills, have a nurse to take care of him.

I think as soon as he is able to get up, I will send him to Portland, as he has a sister there and if it comes to a matter of a little expense I think you will help him out a little in the city.

Muraine returned Sunday night. I have seen him Monday and Tuesday and he was drunk both these days. I am not paying any attention to him, and if he does not straighten up shortly and go to work, I will have to let him go.

I note what you say about everything going right with you at the other end and that the \$25,000.00 deal at Sioux Falls has been closed. I am tickled to death to know that you whipped the people down stairs into shape. With that off our hands, I do not think we have anything more to worry about. As to the \$50,000.00 that we still owe them, payable between now and July, we can easily meet that.

I am doing the best I can with my paper; however, money is a little tight in this part of the country. Still, the paper that I have is all gilt edge and it will come due in thirty, sixty, ninety days.

I will send you detailed report of all business done here and you can take care of same as you see fit. However, I have the thing well under way and properly systematized.

I leave all my paper at some bank in the town in which I do business, for collection, and when it is paid they will remit.

Note that you received the Stradley letter and that the Ladd & Tilton Bank does not seem to know anything about it. However, I think they will be more careful hereafter.

Your understanding regarding my contract is correct. I received a letter from LeMonn last week asking me if it was my understanding that while I was out on this deal, I would not be entitled to my \$75.00 a week. I did not answer his letter at all, for I thought it too ridiculous. I expect to see my \$75.00 credited to me just the same, as I am not out here on charity. I was rather surprised that Moraine should know of the private stock deal, as I told him nothing about it whatever.

I am waiting for a reply to a wire I sent to the State Senator asking him whether he could come in to Portland with me tonight. If he can, you will see me there Saturday morning. I will take up conditions with you in detail.

Sewell

I have sold ~~Worth~~ at Kent, as he wants to stay around the city until after the holidays.

Hoping you are well, and with kind personal regards, I am

Very truly yours,

O. E. Gernert.

Whereupon the Government offered and there was received in evidence and marked as Government's Exhibit Number 288, a letter written by the defendant Gernert to the defendant LeMonn under date of February 27, 1912. The following is a copy of said letter:

"THE STOCKTON

Stockton, Cal.

2/24

My dear LeMonn:

I have yours of the 27th. As to this country give me two inches of rain and I'll come home with forty feet of gold. What is Amsden doing in Sacramento he is hiring men posing as fiscal ag't. A fellow by the name of Nathan was in Lodi last week with a street car machine. Some one was in Stockton this week. I am working Tracy, wired you today asking for list of stockholders & especially Cal. & S. Francisco holders.

I believe I will do business with the Tracy bank, directors et all. I told them I had 35000 to sell & if I sold it all in their community the Co would permit one man to seat on the advisory board & see that everything is taken up legitimately. They are to have another special meeting at which my presence will be required at which time I must have stock-

holders list & statement. Show up cash & notes in one item.

Write me a personal letter and tell me you will do all in your power to help me get that 1000 machines I ask for, for my territory. Also say in a joking way that you never knew there were so many banks in the country, as the letters show which are coming in daily asking about machines. Also state that one of the directors stated at luncheon the other day that they are figuring to keep the wheels running 24 hrs a day 3- 8 hr shifts in order to supply the great demand which *I* know there is for our new born toy.

Also state that the other *two* agencies are almost through with the stock selling & if I want to let them have what I got to sell to let you know as they want it, but personally you wouldn't do it as it would mean that I would have to lay *ideal* for a month or two until the machines are ready.

I am feeling fine physically & seem to be sound mentally, its only once in a while I get bugs.

Yours mit lof

Gernert

P. S. I hocked my sparkler today in order to save myself from being knocked down, theres so many hold ups these days."

Whereupon the Government offered, and there was received in evidence without objection and marked as

Government's Exhibit 289 a letter written by the defendant LeMonn at Portland, Oregon, under date of March 2, 1912, to the defendant Gernert at Stockton, California. The following is a copy of said letter:

"March 2, 1912

Mr. O. E. Gernert,
Stockton, Calif.

My dear Gernert:

I have your favor of the 27th and have carefully noted contents of same, and beg to advise that Mr. Amsden has reported at this office this afternoon and is not leaving anyone working in California.

We are today sending you a partial list of stockholders in California, as the entire list was eight pages long, together with financial statement as shown by our books February 1, 1912.

We will be only too pleased to have a member on the Advisory Board from that section of California providing they sell \$35,000 worth of stock allotted to you, as then they would have a sufficient investment to take a deep personal interest in advising with us as to plans of manufacturing and selling.

You may count upon me using my personal influence in giving you all the possible support toward providing you with 1000 machines which you have requested for your territory. You would really be surprised at the number of unsolicited orders that are coming in from almost every quarter, and it has

been a very agreeable surprise to the writer, as I had no idea there were that many banks and paymasters in the country.

You may be interested to know that the Board of Directors have decided to have the factory work overtime and we are figuring on getting the factory on three shifts of eight hours each, which means that they will have to work twenty-four hours a day if the orders keep on coming, in order to supply the great demand, which we are assured for this new device, our Automatic Cashier.

Just a word to advise you that the other two fiscal agents have almost sold their entire allotment and want to know if we can supply them with another block which means, if we are to do this, that we get some from you and want you to advise us by return mail if you are willing to release any part of your block and turn it over to them. In fact, I think they would give you a small premium if you would do so. Just bear in mind that we are not asking you to do this as it would mean that you and your men would have to remain idle for at least thirty or sixty days until we could supply you with enough machines to keep your men busy.

It may interest you to know that a week ago I saw the first Standard Commercial Automatic Cashier demonstrated and in action and watched it work for a period of thirty minutes without it making a symbol of an error and I believe that this dem-

onstration proved one fact: That it is the first time in the history of the world that any machine ever made three automatic visible records of a transaction, two of which were permanent, one on the endless tape and the other on the check itself and these, together with the visible total which is always before you, constituted these three records. Besides these three records we had two others, one when the keys were depressed, and as you know remain down until the machine is operated, and the other the money which was paid from the machine automatically.

We have been very enthusiastic after this demonstration and are absolutely satisfied that these machines will revolutionize the present systems of handling money and prove to be one of the greatest of modern inventions.

Am glad to know that you are feeling yourself again and wishing you continued success, beg to remain,

Yours very truly,

SALES-MANAGER.

FML:E

Whereupon the Government offered in evidence a letter written by the defendant LeMonn to the defendant Gernert of date March 2, 1912, the letter having been written at Portland, Oregon, and addressed to the defendant Gernert at Stockton, California. It was marked as Government's Exhibit Number 294. The following is a copy of the letter.

“March 2, 1912

Mr. O. E. Gernert,
Stockton Hotel,
Stockton, Calif.

Dear Mr. Gernert:

Mr. Muraine has written to Mr. Menefee, stating the serious condition on account of no rain, which exists in and around Stockton and that they are going to work the factories around Stockton, and he also sends clippings of some paper to verify this drought of which he writes. This matter has been taken up with the writer and am giving you this information so that you may know just what is coming to headquarters and we are not answering his communication as we want you to have full charge of the campaign and to take the responsibility of success or failure upon yourself, as we might do more harm than good in attempting to aid you with letters from this office.

Don't let them get you on the run. Keep your head and your nerve and lead them instead of being influenced by anything that they had to say. At the same time, weigh carefully whether it is going to be to our best interest to continue a campaign there. If it looks like a two to one shot for failure, it might be well to plan to get into some territory where the chances are of success would be much greater. This however, can only be a suggestion that we are anxious at all times to plan with you for the best, but before you make this new move, inasmuch as it

would require additional financing, we of course would want you to take the matter up with us and have it definitely decided or agreed upon so that we may all be working harmoniously from beginning to end.

We want you to write us fully at least once a week as to the conditions, etc., so that we may know, first hand, from you how the men are feeling, what they are doing, etc., instead of learning these things from them direct and am sorry to say that it appears to the writer that you are starting without giving this matter the consideration that it merits as we must hear fully and at regular intervals from our fiscal agents who are in charge of such an important campaign. Change places with the writer and tell me how, if you were here, you would help me there with such meagre information at your command as has been supplied to us here in the office.

We are rather surprised that you did not reply to our wire of yesterday and can account for it only on the basis that you were not in Stockton to receive same, but we are in great hopes that you will be able to send us information that the boys have gotten started to a nice business by the close of this week.

Wishing you the very greatest success, we beg to remain,

Yours very truly,

FML:E

Sales-Mgr.

P.S. Kindly advise with the boys and find out what kind of telegrams or letters they think would aid them in closing business so that we may be able to send some at intervals of at least once a week, in order to close the largest possible business each and every week.

Whereupon the Government offered in evidence a letter written by the defendant LeMonn to the defendant Gernert of date March 23, 1912, the letter having been written at Portland, Oregon, and addressed to the defendant Gernert at Stockton, California. It was marked as Government's Exhibit Number 295. The following is a copy of the letter:

"March 23, 1912

Mr. O. E. Gernert,
Stockton Hotel,
Stockton, Calif.

My dear Gernert:

We received the following W U Day Letter of yesterday from you:

"F. M. LeMonn,

Advanced men as follows: Moore two fifty; Muraine ten five; Sewall one five; Lovelace fifty; Howe ninety five in addition to the above I have given Muraine ten and Sewall thirty five for this week. The money I requested was due last Saturday there are two weeks due today. I wired from Coalinga that there was no business closed. Now don't ask any more questions if you don't want to

continue the contract we three entered into you and Menefee wire me its off. You have my consent herewith I will stick and go it alone on my own stock as I am going to get some money. You men have it coming in from all sides. I was to be in on that deal but was passed up. You are making enough money to buy oil real estate, mining stocks, etc. and all I want to do is get myself out of debt. I have devoted two of the best years of my *left* on that proposition. Was willing to stand or go down with *and* and I feel I am somewhat responsible for your success. I am due for some money on this proposition and must have it not only to pay the loans I have made and put into this but *we* take care of my family. Now LeMonn if you want to call the contract off wire me personally two fifty wire answer.'

Our books show since February 10th that we have advanced to you as follows: Feb. 10—\$150, Feb. 21—\$250, Feb. 26—\$215, Feb. 27—\$40, and March 5—\$180, March 12—\$200 and March 23d—\$140; making a total of \$1175. Your telegram shows amounts advanced to men as follows: Moore—\$250; Muraine—\$105; Sewall \$105, Lovelace \$50; Howe—\$95 and in addition Muraine \$10 and Sewall \$35; making a total of \$650, after deducting the \$650 advanced to your men from \$1175 it shows that you have personally had \$525, or only \$125 less than all the men. This means that you personally have used up more than the amount we agreed to advance in the way of \$75 per week, as \$75 per week for six weeks would amount to \$450, notwithstanding

the fact that you have failed to give us a report from week to week as we have requested in the way of receipts from the men for advances you made them, as well as giving us a report at the end of each week whether you had business or not.

The above telegram from you is certainly the most injurious thing you could possibly send by wire, as there is only one way where you could do us more harm and that would be to publish it in the newspapers and it should be unnecessary for us to caution you that under no circumstances should you ever resort to such methods unless you want us to believe that you are intentionally trying to injure both the officers personally and the Company as well. If there are any more outbreaks like this, I will take a personal delight in taking the next train to you and will talk with you face to face instead of wasting any time in writing or wiring. If you think you can indulge in any such injurious methods as this, to say nothing of it being wrong and unfriendly, you certainly are very much mistaken.

You might know that we would not be willing to have you continue a campaign to your own personal profit after we had given you the assistance and advanced you money, without our having some interest in the matter and it seems to us that if you will only attend to the little things which you so apparently ignore, in the way of giving us reports that we requested and have every right, from a business point of view, to have, as it would save a lot of unpleasantness.

Don't waste any time in stating that you have devoted two of the best years of your life in this proposition as the writer has some conception as to how much time you have put in, along other lines outside of business and I think that you are rather offensive when you call my attention to the fact that you have been somewhat responsible for my success, when you fail to take into consideration what the writer has paid you outside of your regular earnings as compensation for such service rendered. I am afraid you are going to spoil your future success by assuming too much on the past favors and the value of them that you have rendered the writer.

At the same time I want to assure you that I am grateful for all the past favors that you have rendered, but it is not the time to stop work and begin fussing over the past but it is time that we all get together and keep together in working for the best interests of the Company and all concerned, as divided you know what the result will be.

I am in hopes that you will read this letter in the spirit in which it is intended and that you will get it out of your mind that we are trying to fuss you, but we must insist that we get a substantial return for the money spent or at least, have a complete explanation and statement regarding advances, etc. If there

We have wired you twice regarding the Tracy deal but in each telegram you have failed to report

and you can readily understand that this doesn't look like good business to us. We believe that it is up to you to give us some explanation as to why you have failed to answer this specific question, for we have a right to know and will take the proper steps to protect our interests at all times.

In conclusion, upon receipt of this letter we want to ask you to write us fully as to the work to date and as to what each man has done or what you think he can do so that we can change the campaign, quit it entirely or plan it along the lines that we are willing to continue expending money on same.

Mr. Menefee leaves today and I want you to put your shoulder to the wheel and co-operate with the writer in every possible manner in order to make the campaign, during his absence every success, and rest assured that if it is your pleasure to give us some evidence that you are still with us in the way of working toward the greatest success of this Company you will have no need to fear but that you will be treated squarely, fairly and even generously in the future as you have been in the past, and don't get peeved because we are watching the money end of it as there never was a time that we were needing cash to a greater extent than now, for we have larger bills than ever for February and March, in the way of paying for machinery, etc., and must watch every point.

Let us all work together and see if we can't give Mr. Menefee a substantial token of our apprecia-

tion of him in the way of a better business than we have secured at any time since the stock has been advanced.

Hoping everything will come out right and that our relations will continue pleasant and profitable for a long time to come, we beg to remain,

Yours very truly,

FML:E

Sales-Mgr.

Whereupon the Government offered in evidence a letter written by the defendant Menefee to the defendant Gernert of date March 12, 1912, the letter having been written at Portland, Oregon, and addressed to the defendant Gernert at Stockton, California. It was marked as Government's Exhibit 440. The following is a copy of the letter:

"March 12, 1912.

Mr. O. E. Gernert,
Stockton Hotel,
Stockton, Calif.

My dear Gernert:

Your letter of the 10th instant; also telegram same date received. I wired you nightletter last night with reference to meeting Campbell Friday, but from your letter and the telegram from Mr. Le-Monn think it perhaps unadvisable to not meet your partied for the 16th, and if that is the arrangement, will try to have Hackney there with the machine.

Campbell wanted you to go to Coalinga as he is there on some private business and thought with your

assistance and the machine he could start a pool or something of that kind and pull off a good "stunt." Campbell, as you know, is a fellow who really does things and unless you have mighty good prospects there you are, it would be a good thing if you would tie up with his proposition as he would not want to stay there long, but would merely try to get it started and come back to be here while I am gone. Mr. LeMonn's trip and Mr. Campbell's absence makes it necessary for me to postpone my trip for another week, and considering they are both down in that country, have changed my plans and will go directly East.

In regard to the Seattle land, will say that I have on a cash deal for it and will know in the next four or five days and if it does not go through, will make the stock trade at \$12.50 per share which we talked about when you were here. Of course it would not be policy for us to turn down a chance to get some cash. Am perfectly willing to trade you the St. Johns property, but thought it best to wait until you come up so we could be together and make the deal. The St. Johns property is rented to a good tenant at \$14.00 per month.

We have had things double up on us pretty heavily here in the money way in the past month. Collections are coming in fairly good and also some little cash business, but have had to squirm pretty lively to keep the pot boiling. If my remittance comes the 15th, which I feel is pretty nearly a certainty,

it will then ease up the whole situation, as it amounts to enough to be worth while.

Bonnewell has a man in from Wyoming and closed a deal with him last night for \$6000 at \$30 per share, a small amount in cash and the balance on very short time paper, which is gilt edged. It is also a load to open the territory as the party is a man of wealth and influence and goes to work for Bonnewell on a 5% commission, under contract to produce \$10,000 in cash by May 1st and \$14,000 more by July 1st in addition to the subscription he made. I think it will mean from \$30,000 to \$60,000 worth of business as it is certainly the right connection to make.

Our first machine is assembled today, tried out and found to be satisfactory in every respect. It is beyond question so superior to our demonstrating machines that they are a mere joke. The first lot of commercial machines is also well under way. Die making has progressed very satisfactorily and we expect to get out a bunch of machines by the last of April at the outside, and this will be immediately followed by a larger number, and from the looks of things at the factory, by July 1st we will be in full swing delivering machines to the trade right along and practically on a self supporting basis so far as the factory is concerned. As you know, Mr. Conley advises that he can deliver more than \$500,000 worth of machines by the close of this year.

Now, I just have one kick to register against you and it is a good hard one. It is that you don't write us, keep us advised as to what is happening, what you expect to do, etc. Surely we ought to have a good long letter going into detail not less than once a week. It is mighty uncomfortable sitting here and not knowing for two or three weeks at a time very much about what you are doing or expecting to do and it leaves us in a very poor situation to calculate or plan to help you. Now, you know I do not kick for the sake of kicking and do not intent anything as being offensive, but I am really serious about this. We ought to hear from you oftener and fuller than we do. That has always been the worst criticism I have had of you and your work in the field—the lack of knowledge as to what is going on.

Am wiring you today as follows: Your meeting indicates not advisable to meet Campbell. Perhaps would do to meet him Monday or Tuesday. Arranging send Hackney with Computer Wednesday evening. Wire us where he shall meet you.

If you have not already wired or written me on receipt of nightletter and above telegram, do so at once so I can be in touch with the situation and know what to do.

I think the Campbell proposition might mean lots to you, so if after your meeting Saturday the prospects are not good, would advise getting in im-

mediate touch with him and connecting with him early the coming week, taking Hackney and the Computer.

With best regards, I am

Yours faithfully,

FM: HG

President."

There was no evidence offered by any party in the case that the defendant Gernert exhibited (Government's Exhibit 289) to any person or that he sold any stock in California to any person whomsoever. All of the defendants, including the defendant Gernert and the defendant Bilyeu admitted that each, every and all of said letters were written by said respective defendants to said respective defendants and transmitted by and to them through the agency of the United States mails.

By the stenographers who were in the employ of the United States Cashier Company during the time that all of the letters and telegrams mentioned in this bill of exceptions were written and sent, it was proven that it was the habit and custom of the officers of the United States Cashier Company, particularly of the defendants Lemonn and Menefee, to handle the matter of the correspondence in the following manner: A letter would be dictated to the stenographer, who would write the same, whereupon the original would be signed by the writer of the letter and the same would then be deposited in the mail for mailing and delivery, as a part of the custom of the office. The stenographer would then upon the lower left-hand corner of the letter or other instrument in writing, and place the initials of the author of the let-

ter, together with the initials of the stenographer who wrote the letter. A carbon copy, which would be an exact copy of the letter without the signature would then be placed in the files of the company as a part of its records. Telegrams were prepared in the same way with the exception that attached to telegrams of which there were to be a number of the same telegram to be transmitted to the several agents there would be a letter to the telegraph company authorizing and directing said company to transmit said telegrams and to charge the same to the account of the United States Cashier Company. Mr. House, expert accountant for the Department of Justice, testified that the defendant Menefee had voluntarily delivered to him before the indictment all of these letters and telegrams and that the witness House had thereupon written upon each of these letters and telegrams his initials so as to be able to identify them. House further testified that at the time the defendant Menefee turned these letters and telegrams over to him, that Menefee then voluntarily told him that these letters and telegrams constituted and were the correspondence of the United States Cashier Company. There was no proof offered by either side which would prove or tend to prove that any of the said letters or telegrams were not genuine. There was no evidence offered by either side tending to prove that the defendant Gernert received any of said telegrams or requested that any of said telegrams be sent or that he was at the time the telegrams were sent at any of the places at which they were sent, or that he acted upon any of said telegrams hereinafter set forth. It was further testified to

by the stenographers that it was the custom of the office and especially of Menefee and LeMonn in writing letters and sending telegrams to salesmen, that but one carbon copy of the letter would be retained by the office, but that to the said carbon copy so retained there would be by the stenographer attached a list of all of the agents to whom the letter was sent. With this proof of identification as to each, every and all of the said exhibits, the following Government Exhibits were introduced and read in evidence:

Government's Exhibit 139: telegram to salesmen signed by United States Cashier Company under date of September 14, 1911, with list of nineteen agents attached, including the name of O. E. Gernert, C/o O. L. Hopson, Woodburn, Oregon. The following is a copy of said telegram:

"September 14, 1911.

Only a small block of stock remaining at fifteen. Close business daily as rise to twenty dollars per share may be announced any day.

Charge.

U. S. Cashier Co.

Government's Exhibit 146: telegram from United States Cashier Company to agents, under date of October 19, 1911, with list of twenty-eight agents attached, including the name of O. E. Gernert. The following is a copy of the telegram.

"October 19, 1911

Close business daily each day. Only small block remaining at fifteen dollars. Positive advance to

twenty or twenty-five dollars within a few days and may not advise you again before advance takes place.

Charge

United States Cashier Company."

Government's Exhibit 146E: letter written by Le-Monn to Gernert under date of October 19, 1911. The following is a copy of the letter.

"October 19, 1911

Mr. O. E. Gernert,
266 $\frac{1}{2}$ Stark Street,
Portland, Oregon.

My Dear Gernert:

We want to congratulate you on the excellent business you have been securing for the past few days and to advise you to close all your prospects Friday and Saturday as the advance from \$15 to \$20 may go into effect Monday without further notice.

Report sales promptly so that you will not get left by the block being over-sold.

Yours very truly,

UNITED STATES CASHIER CO.

FML:HE

Sales-Mgr."

Government's Exhibit 176: telegram under date of March 7, 1912, from United States Cashier Company to agents, with list of nineteen agents attached, including the name of O. E. Gernert, Stockton Hotel, Stock-

ton, California. The following is a copy of the telegram.

“March 7, 1912

Dont oversell one hundred shares without permission by wire as thirty dollar allotment almost gone and advance to fifty likely take place at early date without further notice.

Charge

United States Cashier Company.”

Government's Exhibit 188: a telegram from United States Cashier Company to agents, under date of May 1, 1912, with list of fifteen agents attached, including the name of O. E. Gernert 432 Pioneer Building, Seattle, Washington. The following is a copy of the telegram.

“May 1, 1912

President and General Manager Frank Meneff, just returned from four weeks eastern trip of investigation and inspection and the management today have decided the next advance will be twenty dollars per share over the present price. As there is but a small allotment remaining of resales at thirty dollars you must close business daily as cant guarantee to make any deliveries at that price after Saturday next. Dont oversell one hundred shares without wiring for permission.

Charge

United States Cashier Company.”

FML:E

Government's Exhibit 187: a telegram under date of April 24, 1912, from the United States Cashier Company to agents, with list attached including the name of O. E. Gernert, 432 Pioneer Building, Seattle, Washington. The following is a copy of the telegram.

"Portland, Ore., Apr. 24, 1912.

Mr. Menefee President returns Saturday date advance to fifty will then be decided close all options and prospects offered at thirty as cant guarantee at this time accept subscriptions at thirty date later than Saturday twenty seventh. Mail all subscriptions and collections without fail Saturday to reach here Monday morning.

Charge.

United States Cashier Company."

Government's Exhibit 182: a telegram under date of April 11, 1912, from the United States Cashier Company to agents, with list of thirteen agents attached, including the name of O. E. Gernert, General Delivery, Seattle, Washington. The following is a copy of the telegram.

"April 11, 1912

Dont give any options at thirty dollars after Saturday thirteenth as allotment nearly sold out. Next advance positively to fifty dollars which will go into effect within a few days.

Charge

United States Cashier Co."

FML:E

Government's Exhibit 174: a telegram under date of February 28, 1912, from United States Cashier Company to agents, with list attached of twenty-one agents, including the name of O. E. Gernert, Stockton Hotel, Stockton, California. The following is a copy of the telegram.

"Feb. 28, 1912

As previously advised in our letters and telegrams stock will be advanced at early date to fifty dollars per share as the small block allotted at thirty is going fast. Unsolicited orders for machines are coming in from every direction. First machine will leave factory in few days.

Charge United States Cashier Co."

Government's Exhibit 166: telegram under date of January 16, 1912, from United States Cashier Company to agents, with list attached including the name of O. E. Gernert, Astoria Hotel, Los Angeles, California. The telegram is as follows:

"Portland, Ore. Jan. 16, 1912.

Allotment twenty dollar stock nearly exhausted and expect to raise price to thirty January twenty-second and positively no orders will be received after February first except at thirty. This for your confidential information and positive. Don't depend on later than January twenty-second.

Charge. United States Cashier Co."

Government's Exhibit 129: telegram under date of July 3, 1911, to agents residing in Seattle, Washington,

Spokane, Washington, and Lewiston, Montana, but not including O. E. Gernert. The following is a copy of the telegram.

“July 3, 1911

You are hereby authorized to sell two hundred fifty shares at twelve fifty providing applications are mailed to us by July fifth bearing date not later than July first as this block was allotted to San Francisco agency for which settlement was not received.

Charge.

United States Cashier Co.”

Government's Exhibit 129B: The same telegram under date of July 3, 1911, from the United States Cashier Company to agents, including twelve agents in Oregon, Washington, and Idaho, and including the name of O. E. Gernert, Commercial Hotel, North Yakima, Washington; and in reference to the last mentioned two telegrams, Government's Exhibits 129 and 129B, the Government by similar proof proved that on July 3, 1911, the United States Cashier Company had telegraphed their San Francisco agents as follows:

“July 3, 1911

You are hereby authorized to sell Two Hundred Fifty shares at twelve fifty providing applications are mailed to us by July fifth bearing date not later than July first, as this block was allotted to Montana agency for which settlement was not received.”

Thereupon the Government called to the witness stand Myrtle Meadows, who testified among other

things that she was a stenographer in the employ of the United States Cashier Company during the latter part of the year 1911 and the early part of 1912, and the witness testified as to her employers customs in handling their office work as is shown on pages 58 and 59 of this bill of exceptions.

Whereupon the following proceedings were had:

MR. REAMS: I am going to ask you to examine the carbon copy of the letter of date of February 10, 1912, and after you have examined it carefully tell the jury if you know who dictated the letter and to whom it was dictated.

A. I believe it was dictated by Frank Menefee and written by myself.

MR. REAMS: The Government will offer in evidence the letter identified by the witness and dated February 10, 1912, marked Government's Exhibit 293.

MR. MAGUIRE: The defendant Gernert objects to this because there is no proof showing he received it or accepted it, or proof that it was a contract entered into. I may state for the information of the District Attorney that this was not entered into and for that reason he objects to it.

MR. REAMS: I do not know if the Court feels whether or not this contract was ever entered into. I do know that the proof shows that under the admission that the carbon copy came from the files of the company and it has been testified to by the witness that she believes

it was dictated to her by Mr. Menefee and in the regular course of business the original would have been mailed.

THE COURT: It will be admitted subject to the explanation of the defendant.

The following is a copy of the letter:

“Portland, Oregon, February 10th, 1912.

Mr. O. E. Gernert,
Portland, Oregon.

Dear Sir:

In reference to our understanding in regard to your selling stock in California territory, will say that we will make you the following proposition: You are to work in the territory from San Francisco south toward Los Angeles, keeping at a distance from said latter place, so as not to interfere with the territory or work of our Agent there, and you are to have working under you such men as you may mutually arrange for, and after the first advancement to any of the men working under you, no further advancement shall be made to any of them, except through you.

All men working under you shall receive a commission of fifteen (15%) per cent, providing the business done by them shall not equal or exceed the sum of One Thousand Five Hundred (\$1,500.00) Dollars per month; twenty (20%) per cent if the business done by them shall exceed One Thousand Five Hundred (\$1,500.00) Dollars per month and

shall not reach Three Thousand (\$3,000.00) Dollars; and twenty-five (25%) per cent if the business done by them in any one month shall exceed the sum of Three Thousand (\$3,000.00) Dollars; these commissions to be allowed and rated only on cash business done by each of your men respectively.

On all the business done by your men where settlement is made in paper, and either notes or contracts taken, only a fifteen (15%) per cent commission shall be allowed, and no paper shall be taken to run longer than ninety (90) days, provided where settlement is made for purchases of stock by note, if you or your agent shall succeed in discounting said note without recourse, so that the proceeds shall be received by us within ten (10) days after the close of the month in which the sale of the stock is made for which said note is taken in settlement, same shall be credited back as cash business for the month in which the subscription was taken. The commissions on settlements made by note or contract or in any manner other than cash, shall only become due and payable when the money is received by us for the sale or collection of said note or contract.

The above terms shall apply to any business done by you personally without the aid or assistance of an Agent.

It is understood and agreed that you shall be entitled to receive an overhead commission on all business done by you or your Agents of five (5%) per

cent, and your commission shall be due and payable as that of the Agents, or in other words, on cash received, or on notes negotiated without recourse or collected.

We will advance to you for your personal expenses, the sum of Twenty-five (\$25.00) Dollars per week, and pay you in addition to the above commission, a salary of Fifty (\$50.00) Dollars per week, it being understood that the Twenty-five (\$25.00) Dollars per week expense money shall be returned to us or deducted from your commission as earned.

No settlement shall be made by you or any of your Agents on cash business turned in to you or through you to us, except the minimum commission of fifteen (15%) per cent on cash received, which you may retain and pay to the agents as the cash is received by you, and the bonuses or extra commissions, if any shall accrue to any agent, shall only be settled ten (10) days after the close of the month, when the volume of business done by each person working under you, shall be finally ascertained.

It is understood that in all sales made by you or your organization, you shall have the right to turn your own personal stock for one-fourth ($\frac{1}{4}$) of all such sales; that the turning over by you of the stock to the amount of one-fourth ($\frac{1}{4}$) of all of the net proceeds, less your commissions, agents' commissions, and other expenses incurred in the selling of the stock which you shall dispose of.

In consideration of allowing you to dispose of one-fourth ($\frac{1}{4}$) of the stock handled by you, from your personal stock, you are to bear one-fourth ($\frac{1}{4}$) of the expense of your own salary, sales commissions, and other expenses, it being understood that our agreement to pay to you the salary mentioned, and advance to you the money as above stated, is to be considered only as a loan to the extent of the advancement of the Twenty-five (\$25.00) Dollars per week, and one-fourth ($\frac{1}{4}$) of your salary.

With reference to all notes taken by you, it is understood that you shall, where you leave same with a local bank for collection, take a receipt from said bank, particularly describing the note, the returns and commissions to be allowed for the collection, and so deposit the same that the proceeds will be at once accounted for and remitted to the undersigned by said bank.

Yours faithfully."

No. 3

FM:MM

To which action of the Court the defendant Gernert was duly allowed an exception.

Whereupon Lew Paramore, a witness called on behalf of the Government, being first duly sworn, testified as follows: I live at Snohomish, Washington, and have been a druggist in that city where I have lived since March, 1890. I am slightly acquainted with the defend-

ant O. E. Gernert. I first met Gernert in company with others at the Commercial Hotel in the city of Snohomish, and afterwards in my home. I bought some stock on the representation of what it was to do, and I don't know as I can go to work and describe all the machine was to do. It was a coin-paying machine, and had something to do with paying checks, making a record and paying checks, an adding machine, it could do pretty near everything but talk. I bought fifty shares at twenty dollars per share on December 2, 1911, and gave a note bearing five per cent interest to run for five years. I gave the note to the defendant Gernert for the company. The note has not yet been paid, but I paid the interest on it at the First National Bank of Snohomish, Washington, for two or three years. Mr. Gernert claimed to be representing the United States Cashier Company as assistant sales manager. He represented that the stock that I bought would be treasury stock of the United States Cashier Company, and that stock was being sold at that time to pay off what little indebtedness the company then owed on the patents. I think this indebtedness was somethnig like \$50,000 as near as I can remember, but I won't be positive about that, because I did not charge my memory with the amount of it. Mr. Gernert at that time said that the company owned all the patents to its machines. The fact of the business is I bought this stock on the representation of Mr. Gernert and what he said at that time particularly, which I could not be called upon to remember. I am a man past seventy-five years of age, and my memory is not as good as it was ten years ago.

I could not tell the story unless questions are asked me which bring the facts back to my memory. Mr. Gernert said that dividends would be paid within the coming year, and that he had not any doubt but what the dividends would reimburse me for the amount that I was then paying for the stock. He made the statement to me as near as I can remember that the railroad companies were now, at that time, paying twenty-five cents a day for the machines that they were using; but the machine that this company was making, they were going to put them in the streetcars at fifteen cents a day, and that the profit accruing from the rent of these machines would pay the running expenses of the company every year. I think if I remember right, that he expected to derive \$150,000 a year from the rent of these machines. Mr. Gernert and Mr. Muraine were there at that time with another man. There were three of them together, but I do not know who the other man was. I had no business with him. I have never received any dividend upon my stock, not even the scratch of a pen from them.

Cross examination by Mr. Maguire:

I bought this stock on December 2, 1911, at Snohomish, Washington; the agents had a machine there with them at that time. I could not swear to the machine, for I did not pay any very particular attention to it. Mr. Gernert demonstrated the machine to me. It would pay any amount of cash up to a certain amount. I cannot explain it as he did only in regard to the checks. You put a check in there and you paid the money and

it would show. I think it showed on the check the amount of money that would pay on it, and the balance was left. I did not charge my memory particularly with them. They were not the things I was looking at. I don't know who was the first man I spoke to about it. I don't know whether Mr. Gernert was or not. I think very likely it was, but I would not be positive as to that. Mr. Gernert was present at all of the conversation. Mr. Gernert is the man that I done the business with, and on his statements that I bought the stock. He is the man. I recollect that Mr. Gernert came out to my house. I think that Gernert, myself and Muraine walked up there together, I think if I remember right. Mr. Gernert is the man who took my subscription. Mr. Gernert made out the note in his own handwriting, and that defendant's "Exhibit T" is a copy of the note which he gave to the defendant Gernert.

DEFENDANT'S EXHIBIT T.

\$1,000.00.

December 2nd, 1911.

Five years after date, without grace, I promise to pay to the order of O. E. Gernert, One Thousand Dollars for value received, with interest from date at the rate of Six per cent per annum until paid, principal and interest payable in United States Gold Coin, at Snohomish, Washington. And in case suit or action is instituted to collect this note, or any portion thereof, I promise to pay such additional sum as the Court may adjudge reasonable as attorney's fees in said suit or action.

Due December 2nd, 1916.

Whereupon the witness testified as follows:

Q. Now, I will ask you to examine this pink slip here and state whether or not the signature "Lew Paramore" appearing in that is your signature.

A. Yes, that is right: yes, that is my signature on there, yes.

Q. Now, the words "Lew Paramore" is your signature, and the word "Snohomish" and the abbreviation "Wash." for Washington is all in your handwriting?

A. Yes.

Q. And it was signed by you on the date that this bears was it not?

A. Yes.

Q. December 2, 1911?

A. Yes.

Q. And now where was that executed, Mr. Paramore?

A. It was executed at my home.

Q. At your home?

A. Yes.

Q. Now was Mr. Gernert there—whereabouts in your home? What room, do you recall?

A. Well, it was in my regular sitting room where I do my sitting, reading and writing, everything of that kind.

Q. Beg pardon.

A. Oh, it was a room where I do my sitting and writing and reading, etc.

Q. Who was present at the time you signed this subscription blank?

A. I think very likely Mr. Muraine was there.

Q. Was anybody else there?

A. Not that I recall now.

Q. Not that you recall?

A. No.

Q. Mr. Gernert was not there?

A. Mr. Gernert was there, sure.

Q. Mr. Gernert was in the room at the time this was signed?

A. Sure, certain he was.

Q. You are clear and positive about that?

A. They were both there as I remember.

Q. Now, isn't it a matter of fact that Mr. Gernert had left you and Mr. Muraine together at the time that this subscription was signed by you? Five years ago is a long time to remember.

A. I don't think so.

Q. You don't recall whether he was or not?

A. I think were both there, and they both went away together.

Q. What I mean to say, was Mr. Gernert there in the room at the time you signed this contract or subscription?

A. Yes.

Q. You are clear about that. We will offer it in evidence.

MR. REAMES: No objection.

Marked Defendant's Exhibit "U."

"Sub. No.—— No. of shares 50. Amount \$1000.00

I hereby purchase from O. E. Gernert, Sales Agent——shares of fully paid and non assessable stock of the United States Cashier Co., for which I agree to pay twenty dollars (\$20.00) per share. Payment to be made on or before five years. I understand that the stock is not transferable for a period four months from date of issue.

Signature: Lew Paramore

Occupation——City Snohomish, Wash.

Date Dec. 2nd, 1911

Rec'd payment on above note \$1000.00

Rec'd payment on above—— ———

O. E. GERNERT, Sales Agent
per P. E. Muraine, Rep."

Q. Now, did they have more than that one machine there, Mr. Paramore, in Snohomish, that you saw?

A. I don't remember but one.

Q. But the one.

A. I don't remember.

Q. That was at least the only one you saw demonstrated?

A. The only one I remember anything about, yes.

Q. Well, of course if there had been one there your attention would have been attracted to it. If there were any representations relative to any ma-

chine they had there, you would recollect that circumstance?

A. Very likely I would remember. I don't think but the one machine.

Q. That machine you saw had what attachment?

A. Oh, I don't remember what all the attachments were on that, at all. I didn't buy it; didn't buy the machine. I was buying the representations of what he told me the machine would do.

Q. And you were there looking at the machine and saw that it did do the things that he said?

A. No, I don't know that it done the things that he said. I bought the machine upon what he told me the machine would do, and what the company was going to do. That is what I bought. I didn't care anything about the machine.

Q. What else did he tell you? Mr. Gernert, I want. That is what I want you to keep clear. I want you to distinguish in your own mind what Mr. Gernert told you, and what some one else, Mr. Muraine or this other man you don't recollect. What did Mr. Gernert tell you with respect to these machines and what did he tell you about the whole proposition? I want your recollection about it.

A. Well, now I can't go over that whole conversation as he told it. He went on and told me what the machine would do—what all it was going to do.

Q. That is what I want to know. What was it he told you?

A. Well, I couldn't call it to mind, anything more than it would pay coin. It was an adding machine and it had some—make some checks—in regard to paying checks so there would be no mistake about a thing of that kind. If you put a check in for \$25.00 and drew \$15.00 of it, the check would show how much was drawn and how much was not drawn, and he went on and demonstrated that adding machine, what advantage it had over other machines; that if a mistake was made, how easy it was to correct it and—Oh, I don't remember the whole thing.

Q. Well, what else did he tell you, not only about that machine, but we want to know what representations, now, Mr. Gernert made to you at that time, keeping in mind to keep separate what Mr. Gernert said, and Mr. Muraine told you or anybody else told you?

A. Well, now you are asking a pretty difficult thing for a man to do, for over four or five years ago.

Q. I know that, Mr. Paramore.

A. Yes.

Q. And that is why I want you to be particularly sure of what Mr. Gernert told you.

A. Mr. Gernert was the man I done the business with. Don't make any difference what this other man said; he is the man I done the business with.

Q. We are not going to have an argument.

A. I know what I am talking about.

Q. I don't question that.

A. Don't make any difference about what the other man said. It was his representations I bought the stock.

Q. So that I understand.

A. That is what I am going to tell you; a great many things and all down in black and white; my letters been right here. I heard a letter read here yesterday—just a statement I heard, repeating all that I heard.

Q. Just tell the jury now.

A. I can't do it, I can't recall; a man don't charge his memory with that. I am a man 75 years old. I can't remember what occurred 50 years ago.

Q. I am not criticizing.

A. You are asking impossibilities; that is what you are doing.

Q. Then you haven't any recollection of what Mr. Gernert represented to you at this time, with reference to these matters?

A. Well, I told you as near as I could recall all he told.

Q. You told Mr. Reames, yes; now I want you to tell me.

A. I told you; I told you the same thing as what I told Mr. Reames.

Q. You have just started in; you told us what Mr. Gernert told you the machine would do; now you told the District Attorney, after a few questions, about a good many other things. What I

want and what the jury is entitled to is that whole conversation that you had with Mr. Gernert.

A. You are asking impossibilities; that is all there is to it.

Q. You can't remember what the conversation was?

A. I can't remember what every word of the conversation was.

Q. I am not asking you that; the substance of the conversation.

A. Well, I told you he represented the machine, a paying machine, was an adding machine and it would—would correct errors, and it would show the checks, what amounts had been paid on it, and what was still due on the check, and I don't remember how many more things he did tell me. It went pretty near but couldn't talk; that is about all; pity it couldn't.

Q. Now, his entire conversation than was limited as to what this machine would do?

A. Yes, sir.

Q. And that is all the conversation that you had with Mr. Gernert—was upon that particular subject?

A. Why, I don't remember having any other conversation with him except that—regarding the business I transacted with him.

Q. That is what I want. I want the entire conversation, what you remember of it. Of course, I am not asking—

A. Haven't I told you once or twice?

Q. Yes.

A. Well, then what are you doing then? What are you asking me those things over and over for?

Q. Don't get the idea, Mr. Paramore, I am criticizing you.

A. Don't try to make a fool of yourself or me either. I am not used to this kind of business and you are trying to make a fool of me, and you are not going to do it.

Q. Well, I make myself as clear to you—

A. You can't do it, I don't think.

Q. Perhaps not; that may be your fault and may be mine. I have been asking you to tell the jury, in response to my question what Mr. Gernert told you in respect to this machine, and what the machine would do. Now, what I want is what other statements Mr. Gernert made with reference to this stock in the company. That is all I am trying to get; you have told us only what he told about the machine. I want to know everything else.

A. He told me I was buying treasury stock, which I didn't have. I didn't receive that kind.

Q. Did he tell you it was treasury stock? Did you receive stock of the company?

A. Why, yes, I guess so.

Q. You guess so?

A. Yes.

Q. You got a stock certificate, didn't you?

A. I got something of that kind, have it home there. Yes, but it ain't the stock—not the treasury stock, remember, the kind that I bought.

Q. Does the stock certificate show what stock it was?

A. Shows stock of the United States Cashier Company.

Q. Yes. When did you find out it wasn't treasury stock?

A. Found it out since I been here in this town.

Redirect examination by Mr. Reames.

Well, the note that I gave has not as yet been paid by me; it is secured by a mortgage upon my property and the mortgage still remains as a lien upon my property.

Whereupon Hiram S. House, recalled by the Government, testified as follows:

The books and records of the United States Cashier Company show that the witness Mr. Paramore received certificate of stock numbered 2729 of date December 6, 1911, for fifty shares. The stub of the certificate numbered 2702 which stood in the name of Frank Menefee. None of this money went into the treasury of the company in payment for this stock. The company received no benefit from this transaction.

Cross examination by Mr. Maguire.

"This certificate 2702 from which Mr. Paramore's stock was transferred was originally issued to Mr. Overlin as part of his salary. Mr. Overlin was developing the currency paying machine at that time for the company, and this stock, consist-

ing of 480 shares, was given as one-half of his salary from February, 1911, to February, 1912, the company having entered into a contract with Overlin to pay him \$800.00 per month, \$400.00 in cash and \$400.00 in stock. The certificate was issued to him in payment of that contract; that eight or ten months before the company had received value at the time the stock was originally issued."

The company paid no agent's commission on the transaction but during the month of December, 1911, the month in which the stock was purchased, Mr. Gernert received \$300 from the company as salary and expense. That was for his salary and expenses for five weeks. The correct amount of the credit is \$375, being his salary and expenses from November 25 to December 30, 1911, approximately five weeks. This was the last credit made to Mr. Gernert's account on the books on account of salary and expenses. He had some credits for commission after that.

John W. Zufall, a witness called on behalf of the Government, being first duly sworn, testified as follows.

Direct examination by Mr. Reames.

I live at Wenatchee, Washington, have lived there since March 12, 1910; am engaged in the pool room and confectionery business. I purchased some stock of the United States Cashier Company about the middle of November, 1911. I purchased ten shares from W. H. Bilyeu, an agent of the company. Purchase was made on November 18, 1911. I bought ten shares at

twenty dollars per share. I paid one hundred dollars cash, and in about ten days I paid fifty dollars more and gave a note for the other fifty. I identify Government's Exhibit Number 287 as the note given by me.

Whereupon the Government offered in evidence promissory note of date December 9, 1911, for fifty dollars, executed at Wenatchee, Washington, by the witness Zufall, due sixty days after date and payable to the order of O. E. Gernert at the Farmers and Merchants Bank of Wenatchee, Washington, the note being indorsed as having been paid on February 1, 1912. Witness continuing:

I did not have the money to pay cash at the time I saw Mr. Gernert and so I gave him a note. I never saw Mr. Gernert until after the sale of the stock had been made and Mr. Gernert came to make the collection. I did not have any talk with Mr. Gernert particularly, any more than I was informed that he would be there and would take the note. In the first place when I bought the stock I paid one hundred dollars down and I did not have any more to pay, and after the first month when I drew my salary, you see, I could pay fifty dollars more, and I have a note for the other fifty, and Mr. Gernert was to be there sometime after the first of the month, and I would give him a note. I delivered the note to Mr. Gernert, in the Farmers and Merchants Bank, where the note was written out, and dated by Mr. Gernert, all of the writing in the note being in the handwriting of Mr. Gernert. I paid the note on the day of its maturity. When the transaction was closed,

I gave fifty dollars in cash to Mr. Gernert and gave him the note for fifty dollars. That he had no talk with Mr. Gernert at that time, or knew what Mr. Gernert was doing other than that Mr. Gernert was representing one of the firm, one of the company. Mr. Gernert said that he was representing the United States Cashier Company.

Whereupon G. H. Moore, a witness called on behalf of the Government, being first duly sworn, testified as follows.

Direct examination by Mr. Reames.

I live at Centralia, Washington, and have lived there since February, 1912. I formerly lived at Leavenworth, Washington; lived there between 1908 and 1912 and was engaged in the cigar business. I know Mr. O. E. Gernert by sight, and I know Mr. P. E. Muraine. I bought some stock of the United States Cashier Company in Leavenworth in December, 1911. I bought the stock from Mr. Muraine; Mr. Gernert was there at the time I bought the stock. Mr. Muraine, Mr. Gernert, and two others—I don't know who they were by name—came into my place and asked if they could display the machine there. I told them they could, and they went around town getting people to bring them up there, and showing them the machines—bankers, etc.—and I went so far as to introduce people to them that came in, which they sold some stock to. Mr. Gernert would explain it more than any of the rest of them while he was there—he was in and out—telling what the machine would do, etc., and what they had done with it,

and I got very greatly enthused with it myself and bought ten shares. I paid twenty dollars per share, by giving my note for ninety days. I gave a note to Mr. Muraine.

Q. Has the note been paid? What, if anything, was said to you while Mr. Gernert was there about what stock you were going to get?

A. Nothing whatever that I know of.

Q. That is, about what was to be done with the money for the sale of the stock?

A. Oh, it was to build the factory which they had started, equip it with machinery to go ahead and make the machines.

Q. Now, about how many people were sold stock in the town—in that town through your cigar store there?

A. Well, was Mr. Scott bought \$500.00 worth, and a Mr. Decker bought some there; others. I couldn't tell you. I don't know who else bought it.

Q. Were the same representations made to these other people as were made to you?

Mr. Maguire: Just a minute; you mean by Mr. Gernert.

Q. Either by Mr. Gernert or at a time when Mr. Gernert was there.

A. I heard the representations made all of them; yes, sir. It wasn't made to me; made to them and I was listening.

Q. And either by Mr. Gernert or at times when he was there?

A. Yes sir.

Witness continuing:

They promised me \$40 for the use of my place while they had the machine in there, and when they went away they said "How are we going to send you \$40.00"? I said, "Well, send two shares," but I didn't get the two shares or the \$40.00, and as time went on and the \$40.00 didn't come, I paid no attention to the note. I wrote them several letters, I think; two if not more. I didn't pay the note I gave for the stock.

Cross examination by Mr. Maguire.

Mr. Gernert and two others made the arrangement for putting the machine in there for demonstrating purposes. They done the talking, Mr. Gernert done most of the talking, and Mr. Muraine. There were four of them there. I made the arrangements with Mr. Muraine and Mr. Muraine and Mr. Gernert both spoke of it. They just put the machine in there to display it. I had no objection to it. I identify the machine as the computing machine. I heard them make representations about the machine that they had there, and after they had made the representations they would show them how it worked a good many times, and the machine did just what they said it would do, and I became enthusiastic over it. At the time I bought my stock I was talking to Mr. Muraine at the front of the store, and Mr. Muraine was alone. The representations made to me in reference to the stock were made by Mr. Muraine, and Mr. Muraine told me that they were going to send me the \$40.00 for the use of my place.

Redirect examination.

Questions by Mr. Reames:

Q. Now, these statements that you say were made relative to what was to be done with the money for the sale of the stock, were those statements made by Muraine alone or by Muraine and Gernert?

A. Why, most of them by Mr. Gernert was made that way.

Q. Were those representations made to you by Gernert?

A. No, to the customers that came in.

Recross examination.

Questions by Mr. Maguire:

Q. Mr. Gernert didn't, at the time you bought your stock—Mr. Gernert had no conversation with you at all in regard to it?

A. No.

Q. And he was out of town, as a matter of fact, a good deal during the time?

A. In and out all the time.

Hiram S. House, being recalled by the Government, testified as follows:

The books and records of the United States Cashier Company show that certificate of stock numbered 2727 was issued to G. H. Moore on December 26, 1911, for ten shares. The stub of certificate 2727 shows it was transferred from certificate 2702, which stood in the name of Mr. Frank Menefee. The company received

no benefit from that transaction. Certificate of stock numbered 2722 was issued to Mr. J. W. Zufall on December 6, 1911, for ten shares. The stub of certificate 2722 shows that it was transferred from a certificate standing in the name of Mr. Frank Menefee, being certificate numbered 2702. The United States Cashier Company received no benefit from that transaction. Moore and Zufall stock was transferred to him from the certificate which originally stood in the name of Overlin, and was issued to Overlin in payment of wages due him.

W. A. Decker, a witness called on behalf of the Government, being first duly sworn, testified as follows:

Direct examination by Mr. Reames.

I live at Leavenworth, Washington; have lived there seven years; am a railroad man by occupation. I purchased some stock of the United States Cashier Company from Mr. Muraine. I bought the stock in Mr. Moore's cigar store in Leavenworth. I bought five shares. Mr. Malthouse, an agent of the company, was with Mr. Muraine and there was another agent there; I believe I was introduced to him at that time; I think it was Mr. Gernert; Mr. Gernert, the defendant, looks like the same gentlemen that I talked to; I bought five shares and I paid twenty dollars a share for it. Mr. Gernert I believe told me that he came up from California, that he had sold an estate in California, and was going to put this money into this company. He figured it would be a good investment. Mr. Muraine

said that they were selling the stock to get money to finish paying off the payments, and to equip the factory with machinery to go ahead and manufacture the machines. They had with them a computing machine. Mr. Muraine said that the company would be paying dividends in less than two years. About the last of December, 1912, I came to Portland and visited the factory.

Cross examination by Mr. Maguire.

I bought the stock in December, 1911; it was on December 6, 1911; the conversations that I had were with Mr. Muraine. There were present Mr. Malthouse, Mr. Muraine, and I don't know whether Mr. Gernert was there at all—he may have gone out. There was a third person present whom I think was Mr. Gernert. As to this third man I am a little bit doubtful as to his identity.

Q. Now, I want you to examine, if you please, this pink slip, and I will ask if that is your signature that appears there in the middle of that piece of pink paper?

A. Yes.

Q. That is your signature—W. A. Decker, Leavenworth, Washington?

A. Yes, sir.

Q. That is the contract you signed at the time you made up your mind to get this stock?

A. Yes. I guess that is it, by the writing.

Q. Now, this is dated November 24, 1911. Now, for the purpose of refreshing your recollec-

tion, I am going to ask you to examine this again, and especially the signature which appears down at the bottom, under the printed words "O. E. Gernert" and will ask you whether or not the third person who was present there at that time wasn't Mr. Bilyeu? Not the defendant, but another Mr. Bilyeu?

A. Well, I don't know, you know. I can't tell you, because there was only those two fellows that I know.

Q. That signature was signed there at the same time yours was signed; the whole thing was filled out there at one time, wasn't it?

A. Yes.

Q. So we have Mr. Muraine there, and Mr. Malthouse and this third person, and seeing the signature "Bilyeu" there, doesn't that refresh your mind to the fact that Mr. Bilyeu was the third man that was there?

A. No, I don't think so. This gentleman here (indicating Mr. Gernert) looks like the man that was there. I am not sure about that, you know.

Q. You wouldn't be sure about that?

A. No, but that is the man that looks like the same man.

Q. But being so long ago, it is a matter a man might be mistaken about. Now, you paid for that in cash, you say?

A. I don't remember if I paid for it in cash. I either paid for it in cash, or give my note for part

of it, for a short time. I don't just remember about that.

Witness continuing:

That the machine that was shown to witness did everything that the demonstrators stated it would do; that he knew that the matter of dividends would depend upon a market that should be created and the expense of manufacturing, and on all those various elements, and it was on his faith in the machine and what the machine would do, that he bought the stock.

On cross examination there was offered and received in evidence the defendant's Exhibit V as follows:

“DEFENDANT’S EXHIBIT V.

No. of Shares	5	Amount	\$100.00.
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I hereby purchase from O. E. GERNERT, Sales Agent five shares of fully paid and non-assessable stock of the United States Cashier Company, for which I agree to pay twenty dollars (\$20) per share.

\$25.00 cash bal. \$25.00 per month.

W. D. DECKER,
Leavenworth, Wash.

Received payment on above	\$25.00
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Received payment on above by note	\$25.00
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O. E. GERNERT,
Sales Agent.
Per Bilyeu, Rep.”

The witness further testified as follows:

Q. Now, as I understand it, Mr. Gernert was not present at the time Mr. Muraine told you about this matter?

A. No, I don't think he was in there, because I met Mr. Muraine outside, in front of the cigar store, and I think he left there and I went back to look at the machine.

Dr. C. R. Zener, a witness called on behalf of the Government, being first duly sworn, testified as follows:

Direct examination by Mr. Reames.

I live at Wenatchee, Washington; have lived there for five years and am a physician. I bought some stock of the United States Cashier Company, and I bought it from Mr. Muraine. He came to my office, asked me to go down and see the machine, which was on exhibition there in the city, went into details as to what the machine would do, the different kinds of machines they would make and put upon the market, and showed me how the machine he had with him worked. I bought twenty-five shares of stock at twenty dollars a share. I gave two notes for the stock; I have paid altogether \$470.00; I sent the money by check to the United States Cashier Company at Portland. Mr. Muraine told me that the money from the sale of this stock was to be used for the purpose of financing the building of the factory, installing machines, etc.

The Government offers in evidence letter dated January 31, 1912, written to Dr. C. R. Zener, Wenatchee, Washington.

Marked Government's Exhibit 297.

Q. I would like to have you examine this Government's exhibit 297, of date January 31, 1912, and tell the jury how and in what manner that came into your possession.

A. That was in reply to a letter of mine in which I made recommendations to the company, and came to me by mail in the regular course of business.

Exhibit 297 read as follows:

"Portland, Oregon, January 31, 1912.

Dr. C. R. Zener,

Wenatchee, Washington.

Dear Sir:

We beg to acknowledge receipt of yours of the 29th inst., enclosing check for \$50.00 to apply on your note which falls due February 15th, and proper credit has been given for same. You speak about "hoping to pay the note in full at this time," etc. Do you mean by that that you would need to have an extension of time after the due date, February 15th? Of course we wish to keep our collections up as promptly as possible, but let us hear from you and we will try to do the right thing.

Yours faithfully,

UNITED STATES CASHIER COMPANY,

Frank Menefee, President."

No cross examination.

Whereupon Hirman S. House, being recalled by the Government, testified as follows:

Direct examination by Mr. Reames.

The books and records of the United States Cashier Company show that stock certificate numbered 2721 was issued to Dr. C. R. Zener on December 6, 1911, for twenty-five shares. The stub of the certificate shows that it was transferred from certificate numbered 2702 which stood in the name of Mr. Frank Menefee. No part of that money went into the treasury of the company in payment for the stock. No part of the money mentioned in letter of date January 31, 1912, being Government's Exhibit Number 297 (letter from Menefee to Zener) went into the treasury of the United States Cashier Company for payment of the stock. The said books and records further show that certificate of stock numbered 2725 was issued to W. A. Decker on December 6, 1911, for five shares. The stub of this certificate shows that it was transferred from certificate numbered 2702, which stood in the name of Frank Menefee; that no part of this money went into the treasury of the company in payment for the stock. The records of the company show that on December 30, 1911, a credit was made to Mr. Gernert's account on the books of the United States Cashier Company for \$375.00, with the notation that it is for salary and expenses for five weeks from November 25, 1911, to December 30, 1911. Said records further show that on January 4, 1912, the company paid Gernert \$83.34 in

cash. On January 12, 1912, \$250.00 in cash. On February 5, 1912, \$25.00 in cash. On February 8, 1912, \$75.00 in cash. On February 10, 1912, \$150.00 in cash. On April 11, 1912, \$100.00 in cash. On May 8, 1912, \$100.00 in cash. On May 25, 1912, \$100.00 in cash. On June 11, 1912, \$50.00 in cash. On July 2, 1912, \$50.00 in cash. Making a total payment in cash of \$983.34, subsequent to December 30, 1911. Mr. Gernert's account was credited with \$513.60 on account of commissions. This would make a payment to Mr. Gernert of \$469.74 more than his commissions. In compiling these figures I have not taken into consideration any commission that Mr. Gernert might have made from the sale of private stock; the records of the company further show that the company has paid to Mr. Gernert in cash a total of \$8170.56 during the years 1910, 1911 and 1912; that the account was opened about the 1st of April, 1910. In these figures I am not taking into consideration any sums of money or any property that Mr. Gernert may have received on account of the sale of any personal stock either belonging to himself or anybody else, and these figures are exclusive of all amounts that Mr. Gernert may have received as commissions on the sale of private stock. In reference to the statements made in Government's Exhibit 295, being a letter from LeMonn to Gernert, the books and records of the United States Cashier Company show that on February 10, 1912, the company paid to Mr. Gernert \$150.00; the next date, February 21, 1912, \$250.00, does not appear on the company's books; the only payment mentioned in said letter which appears upon the

company's books is the first entry of date February 10, 1912, for \$150.00. The books and records of the United States Cashier Company further show that at this time Mr. Gernert is indebted to the company in the amount of \$1439.27. The last entry made in the account was on the 28th day of February, 1913, being a credit for seventy-five cents commission.

Cross examination by Mr. Maguire.

The payments that were made in February, March, April, May and June to Mr. Gernert were advances to Mr. Gernert. During this time there were credit commissions that were made to him. These were commissions for stock that had been sold prior to February, 1912. The commission would not be credited until the stock was paid for, notwithstanding the date of the sale.

Mrs. Ollie B. Howard was thereupon called on behalf of the Government and being first duly sworn testified, among other things that in May, 1913, she was secretary of the Swiss-American Milk & Chocolate Co. and at that time had a conversation with the defendant Gernert in which Gernert claimed to be seeking a position as stock salesman in her company, and that he had been employed by the United States Cashier Company, and that he had traded his stock for \$100,000 in property, and had received a large sum of cash; that he at that time explained to her the manner in which he had disposed of the stock of the United States Cashier Company, that he told her what it cost him for taxi cabs; that he would ride them about the city; wine and dine them; and that after they had absorbed the

spirit of spending so that they would part with their money more readily, that he would sign them up frequently in the "wee small hours of the morning," after having gotten them under the influence of liquor; that after he had told her that he became the salesman for her company.

On cross examination the witness testified that the defendant Gernert was employed by the Swiss-American Milk & Chocolate Company, during the months of May, June and July, 1913, and was called the Assistant Sales Manager of that company; she was thereupon shown an affidavit, which was received in evidence.

DEFENDANT'S EXHIBIT "W."

State of Washington,
County of King—ss.

O. B. Webb having first been duly sworn, on her oath says: That at all times herein mentioned she was and now is Vice-President and Secretary of the Swiss-American Milk & Chocolate Co., a corporation organized under the laws of the State of Washington, and personally familiar with the business management of said corporation; that during the latter part of May or the first part of June of the year 1913, affiant as an officer of the Swiss-American Milk & Chocolate Co., entered into negotiations with O. E. Gernert contemplating the employment of said Gernert as Sales Manager for the said Swiss-American Milk & Chocolate Co., that affiant thinking that said Gernert would ac-

cept the offer made by affiant on behalf of said corporation and for the purpose of saving time in the printing and preparation of stationery, proceeded to cause stationery to be printed upon which appeared the name of said O. E. Gernert as said Sales Manager and as Assistant General Sales Manager; that thereafter said O. E. Gernert declined to accept the position offered by affiant as aforesaid; that O. E. Gernert is not now an officer of said Swiss-American Milk & Chocolate Co., and is not in any way associated with nor connected with the said corporation, whether as agent, employee or in any other capacity, and never has been at any time connected with said corporation either as Sales Manager, Assistant General Sales Manager, or agent, employee or otherwise in any manner whatever connected with said corporation; that any representation which has been made to the public through the said Swiss-American Milk & Chocolate Co., as to the connection of said Gernert to said corporation has been made through the unauthorized, accidental and mistaken use of said stationery by officers or agents of the said corporation.

O. B. WEBB.

Subscribed and sworn to before me this 21st day of July, A. D. 1913.

Chas. T. Newcomb,
Notary Public in and for the State
of Washington, residing at Seattle.

The witness further testified that she signed the affidavit and swore to the same before a Notary Public whose certificate and seal was attached thereto; the witness further testified that she had been deceived into signing the affidavit by Mr. Gernert and that she had never read it before she signed it.

C. F. L. Smith, a witness called on behalf of the Government, being first duly sworn, testified as follows:

Direct examination by Mr. Reames.

I am a minister by occupation. I live in Portland, Oregon, and have lived here about four years. I saw an exhibit of the United States Cashier Company in Portland, Oregon, on Oak Street. Mr. Gernert and other agents of the company were in charge of the exhibit. After I had seen the exhibit I saw the advertisements of the United States Cashier Company in the Oregonian. I saw these advertisements during the latter part of the year 1911. I purchased some stock from an agent of the company by the name of Evans. He was the agent who drew up the contract. I had a talk with Mr. Gernert in the demonstration room. Mr. Gernert talked of the machines, explained them to me, described what other companies had made with such propositions, and gave me all the assurance that he could that this was as good as they, and that this company would more than likely pay large dividends in the near future. He said that he thought that within a year the stock would raise to \$100.00 per share. I bought

eight shares of stock for \$12.50 per share and paid \$100.00.

Harry Wainwright, a witness called on behalf of the Government, being first duly sworn, testified as follows:

I am in the vacuum cleaning business and have lived in Portland for four years, during which time I have been a subscriber to and have read the Journal and the Oregonian. My attention was first called to the United States Cashier Company by the advertisements appearing in these papers, and after I had read these advertisements I went to the office of the United States Cashier Company on Stark Street and met Mr. O. L. Hopson. There were several men there. Mr. LeMonn was there; Mr. Gernert was there; Mr. LeMonn and Mr. Gernert told me that they were selling the stock to raise money to manufacture the machines, that the stock would rise in price and dividends would be paid probably the following year, 1912, and that the company was manufacturing five machines; that the machine was patented in this country and other countries.

A. I don't ever remember much conversation with either one of these men. It was Mr. Hobson that I did business with particularly.

Q. Now, I want to direct your attention to a conversation you had with Mr. LeMonn, and a conversation you had with Mr. Gernert.

A. I don't remember any special conversation with these gentlemen.

Q. The conversation that you have detailed was a conversation which you had with Mr. Hobson, Mr. O. L. Hobson?

A. What was the question?

Q. The conversation which you have detailed was one which you had with Mr. O. L. Hobson?

A. Well, he was very enthusiastic about the machine, and said it was patented——

Q. What I am getting at first—let's go over it again. You saw this advertisement in the Journal, you say, and went to the offices of the company, you say?

A. Yes.

Q. Now, who did you meet there, and with whom did you talk?

A. Met Mr. Hobson first.

Q. Who else did you meet there?

A. You mean personally meet there?

Q. Yes, who did you meet and talk with, yes?

A. There were several men there. Mr. Gernert was there, and Mr. Gloyd, I believe—Mr. LeMonn.

Q. Now, then, Mr. Wainwright, I now direct your attention to a conversation, if you did have one at that time, with either Mr. LeMonn or Mr. Gernert, relative to these machines, the patents on them, the stock that the company was selling.

Mr. Maguire: Witness has already testified he didn't have any conversation with Mr. LeMonn or Mr. Gernert about that.

A. I don't remember any conversation particularly. There were any number of people in the office at the time, and they were all talking together, and these gentlemen would make remarks to every one that was in there.

Q. Well, at the time you had this conversation, then, with Mr. Hopson, were Mr. Gernert and Mr. LeMonn both there?

A. I think so.

Q. Well, then, go ahead and detail fully what that conversation was.

Mr. Maguire: May I ask a qualifying question?

A. They said they had a very wonderful machine there, and it was patented, and undoubtedly it would be a big——

Mr. Maguire: When you say, Mr. LeMonn and Mr. Gernert were there, do you mean they were present close about when this conversation was taking place, or they were simply there in the building and you saw them around?

A. They were simply there in the office.

Mr. Maguire: They were not a part of the conversation with Mr. Hobson at all?

A. Beg pardon?

Mr. Maguire: I say, they were not taking part in this conversation between you and Mr. Hobson?

A. No, sir.

Mr. Maguire: I submit that is not competent. The fact that the man might have been in the building or in the office.

Q. (Mr. Reames): Let's get that straight. I will ask one more question about it. This conversation that you had there, was it a conversation that you had there with Mr. Hobson alone, or were these other two men there taking part in the conversation?

A. Not while he was talking, no, sir.

Q. You bought your stock, then, from Mr. Hopson?

A. Yes, sir.

Q. How much stock did you buy, Mr. Wainwright?

A. Buy and pay for?

Q. Yes.

A. Five shares.

Q. Now, go ahead and tell the jury what representations Mr. Hobson made to you at that time?

A. Said that the price of the stock would advance; by the first of the year it would double what I paid for it; that the following year they would be paying dividends—that is, in 1912 they would be paying dividends.

Q. What was said, if anything, by Mr. Hobson about the patent situation, and in how many countries did he claim to own patents?

A. He said the machine was patented in the United States, and a dozen other countries—Canada.

Q. What machine was that?

A. Change computing machine.

Q. Since you first purchased your stock, how many times have you been back to the offices of the company, and with whom have you talked there?

A. Probably four times all told, before I bought the stock, and talked to, I believe, Mr. Gernert—whoever happened to be in the office at the time.

Q. That is four times before you bought the stock?

A. Yes.

Q. Now, then, how many times have you been back to the office after you bought the stock, and with what officers of the company have you talked?

A. Beg pardon, what was the last part of it?

Q. I say, how many times have you been back to the offices of the company since you bought your stock—after you bought your stock, and to which officers of the company have you talked, when you were back after you bought your stock?

A. Been back there probably fifteen times since I bought the stock, and talked to Mr. Gernert, Mr. Gloyd, Mr. LeMonn, and I believe Mr. Stock, or Mr. Stott, assistant cashier.

Q. Ever talk with any of the other officers of the company about it?

A. I don't think so.

Q. Now, in these talks that you had with Mr. LeMonn, or Mr. Gernert, when you say you went back fifteen times, what was your object in going back and what were the talks about?

A. I wanted to see how things were going, find out what they were doing, if I could.

Q. And what, if anything, would be told you by these officers when you would go back, as to when the machines would be on the market?

Mr. Maguire: The Government is entitled to the conversations had with the witness; no question about that, but it seems to me, in fairness to the defendants and jury, these conversations should be divided. If he had a conversation with Mr. LeMonn, let's have that conversation. If with Mr. Gernert, let's have that one.

Q. Now, just directing your attention to these conversations after you bought your stock, that you say you had either with Mr. LeMonn or Mr. Gernert, those would be the only ones we would be entitled to. Now, can you remember any of those conversations?

A. Yes, sir.

Q. All right. Well, now, let's take the conversations and talks you have had with Mr. LeMonn. What would he tell you when you would come back, as to when the machines would be on the market?

A. Expected to have them on the market in the fall of 1912.

Q. And how many times would you be back, and how many times did Mr. LeMonn tell you that?

A. Probably three times.

Q. Now, then, referring to the conversations you had with Mr. Gernert, how many conversations did you have with him about it after you bought your stock?

A. Well, I spoke to him probably half a dozen times.

Q. And where?

A. Well, at the office in—I forget the building they were in.

Q. The Lewis Building, was it?

A. Yes.

Q. Now, can you tell the jury what the substance of those conversations were about when the machines were going to be put on the market?

A. Well, he talked very encouragingly indeed. He expected to have them on the market by 1912, the latter part of the year.

Cross examination by Mr. Maguire.

These conversations that I had with Mr. Gernert were during the latter part of 1911, and during a part of 1912. I can not remember exactly what time in 1912, but it was in March, April and June, any number of times. The conversations I refer to were conversations when Mr. Gernert was in the Lewis Building in Portland, Oregon; and Mr. Gernert told me that they thought they would have the machines on the market in the fall of 1912, and those were the only conversations that I had with Mr. Gernert. I don't think that Mr. Gernert ever told me anything about the patents.

Elmer C. Townsend, a witness called on behalf of the Government, being first duly sworn, testified as follows:

Direct examination by Mr. Reames.

I am a locomotive fireman. I live at Vancouver, Washington. I purchased some stock of the United States Cashier Company from Mr. P. E. Muraine in October, 1911. I purchased twenty-five shares at \$15.00 per share. Mr. Muraine represented himself as an agent of the United States Cashier Company. He said that the company had large orders for the sale of machines, and that Meier and Frank had an order for the first hundred machines. I met Mr. Gernert once. I gave Mr. Gernert a mortgage on some lots in payment for the shares of stock, that is, I paid for the stock by giving a mortgage to Mr. Gernert upon my real property. Mr. Muraine called in Mr. Gernert, and told him that I had some lots, and would give a mortgage on them for these shares, and I gave Mr. Gernert a mortgage, but I never paid him. I finally gave Mr. Gernert a deed to the lots in payment for the stock. Mr. Gernert was not present at the time Mr. Muraine sold me the stock.

Hiram S. House, being recalled by the Government, testified as follows:

Direct examination by Mr. Reames.

The books and records of the United States Cashier Company show that in October, 1911, certificate of stock numbered 2120 was issued to Mr. Elmer C. Townsend

for twenty-five shares. The stub of this certificate shows that it was transferred from certificate numbered 50, which stood in the name of O. E. Gernert. No part of the money paid by Mr. Townsend, or that might have been paid, on account of that transaction went into the treasury of the company in payment for the stock. Mr. Gernert received no commission upon the sale of this stock.

Whereupon, N. C. Ovaitt, a witness called on behalf of the Government, testified that his name was Nelson C. Ovaitt; that he lived at Detroit, Michigan, and was engaged in the manufacture of coin paying machines, called the Payograph, was president of the Payograph Company, which was a corporation organized under the laws of Michigan, incorporated for \$300,000, with the principal office in Detroit, and having machines manufactured for it in New Haven, Connecticut; that he was acquainted with the defendant, Thomas Bilyeu, met him first in the summer of 1909, in the Ainsworth Block, Portland, Oregon; that the witness had been in Portland since 1892, first in the manufacture of silver spoons, later as an employee of Multnomah County, in the tax collection department, and later as coast agent for the Comptograph Company of Chicago, in the sale of adding machines, and also representing the Brandt Cashier Company in the sale of Brandt Automatic Cashiers. That he had devised the principles of a coin paying machine and had gone to Mr. Glover, a public engineer, with a view of having him develop it for the witness, but he was unable to do so, and that he presented it to Mr. Bilyeu; that Mr.

Bilyeu took it under consideration, and after two days of deliberation said he would take it on, with the understanding that he would have forty per cent of the results, and that the witness was to have the other sixty per cent of the results; that the agreement was not in writing; that the witness was to turn over to Bilyeu his ideas, and Bilyeu was to proceed with the development and put it into working shape, and build a model.

Thereupon the counsel for the defendants, Mr. Pipes, asked the District Attorney: "May I ask what the purpose of this evidence is?" And the District Attorney answered to the Court and jury: "The purpose of this evidence is to show that back in 1909, witness, Mr. Ovaitt, was working upon a coin paying machine, and that he made a full and complete disclosure to the defendant Bilyeu; and we are going to then proceed to follow the making of the machine known as the Payograph, and the knowledge of the Payograph as it was brought home to the defendants, the attempted sale of a similar machine by the defendants in England, and their knowledge of the Payograph applications pending there; conversations had between Bilyeu and Menefee and LeMonn with this witness; bring these transactions down to the date where LeMonn made an investigation of the Payograph machines personally, and sent the telegram here that has been introduced in evidence."

Thereupon counsel for the defense, Mr. Pipes, asked: "For the purpose of showing that the Bilyeu patent is not good?" To which the District Attorney answered: "I don't know whether it will go that far or not, but

it will go to the extent of showing the knowledge of the defendants of the work that Mr. Ovaitt was doing."

Thereupon counsel for defendants interposed an objection to the said evidence, in the following language: "Now your Honor, I think I will interpose an objection upon that statement of counsel. The allegation in this indictment is that there were representations made that the defendants, the Cashier Company, had certain patents. It did have a patent, which it got from its predecessors, and there is a record of the company, which is called the Bilyeu patent. Now, in this case, I take it that this court has no jurisdiction to try out the question between Mr. Ovaitt on the one side, and Mr. Bilyeu on the other, as to who is entitled to that patent. That has been determined by the Department, and if there is an infringement or a conflict between Mr. Ovaitt and this defendant, that is a matter to be settled by a court having jurisdiction to try it, and it doesn't seem to me that collaterally, in this case, the Government can attack a patent upon an allegation that we didn't have it. If we have got it, and had it, it was a true representation; whether it is good, or conflicts with somebody else's patent, or Mr. Ovaitt's, would depend, of course, upon the decision of the court in a suit brought for that purpose. For the purpose for which this evidence is offered, I make the objection. If it is admissible on any other ground, of course the counsel could state it, but upon the ground of showing that Mr. Ovaitt and not Mr. Bilyeu is entitled to the benefit of that patent, and that Mr. Ovaitt and not this company, is entitled to the benefit of the patent, which the company

has got, we think that would be submitting to the jury a question that they ought not to have to try, because it might very well be said that, upon the evidence adduced in this case collaterally, if counsel is right in his contention, the jury might find that Mr. Ovaitt had the better right; I don't think they would, but they might, if it is competent for the evidence to be introduced; and yet upon a trial between them in a court having jurisdiction, it might be determined that Mr. Ovaitt didn't have the better right; so you might have a decree in a criminal case, or a judgment in a criminal case, deciding against the defendant upon that issue collaterally; and it seems to me that ought not to be submitted to the jury, at least for that purpose."

To which objection and argument the United States District Attorney replied as follows: "Of course, your Honor will remember that at the beginning of the Government's case, we introduced in evidence a contract entered into between the American Cash Record Company, on the one part, and the United States Cashier Company upon the other, by the terms of which certain patent rights alleged to be the property of the American Cash Record Company were sold to the United States Cashier Company. Now, one of the allegations in the indictment is that the stock in this company was worthless, and that these defendants knew it to be worthless. Now, anything that the Government could introduce that would tend to prove that this company, the United States Cashier Company, knew that what was being offered for sale had no value, would tend to sustain the allegations of the Government's complaint, that its stock

was worthless. If the Government were able to prove that the United States Cashier Company was demonstrating machines, even for which they may have owned a nominal patent, when one of the defendants knew of the great and grave danger that the company would experience whenever they proceeded to market or sell that machine, why, it seems to me that would be one element of fraud, and would go to substantiate the charge in the indictment that the stock of the United States Cashier Company was not of the value that it was represented to be by the defendants."

Thereupon the counsel for defendants, Mr. Pipes, asked the following question of Mr. Reames: "May I ask a question, Mr. Reames? Is this particular patent the one that you do not negative in the indictment?" and Mr. Reames answered: "Yes, the one that is not negatived in the indictment."

Thereupon counsel for the defendants made another objection, in this language: "Then there is another question that occurred in the early part of this case. The allegation is that the defendants represented that they had patents on all of these machines, whereas, in truth and in fact, the indictment says they had patents only on one. That is to say, this particular patent is not negatived, and that being so, I take it that that is an admission, and not a matter in issue in this case, as to the existence, and of course the validity of that patent. I take it that in an indictment, as in any other pleading, it is not sufficient to say that the representation is false, but it must be further shown by explicit allegation, in

what respect it is false. Now, when it is said it was a false representation, in this indictment, that all these machines were patented, whereas in truth and in fact, the truth was that one of them was patented, or at least that there was no misrepresentation as to this particular machine, I take it that that is not in issue, but that it is to be taken as true in this case, not subject to be determined by the court or jury, but admitted by the indictment that this patent was truly represented, and therefore it cannot be a false representation, and no evidence can be introduced that has the slightest tendency to show that this patent was not a perfectly good patent, because it was the duty of the indictment, of the District Attorney in drawing the indictment, if he meant to, to tender to the defendants an issue upon that, to notify us by making a proper allegation."

Whereupon the Court rules upon the said objection in the following language: "I think in view of the indictment, that it must be conceded, for the purpose of this trial, if there was a patent, that the company had a patent to this particular machine. Further than that, I don't suppose in this trial that the validity of the patent that has been issued by the Government can be tried or determined. There is evidence in this case tending to show that LeMonn made a visit east along in 1912, and learned of this particular instrument, and that it was being manufactured, and that he sent certain letters and certain telegrams to Mr. Menefee with reference to this matter, and advised a certain course of procedure, which the evidence shows the company subsequently took, and for that purpose, I think this testimony of their

connection with this patent is material in this case, to show their good faith."

Thereupon Judge Pipes said: "I am content with this limitation, that these two matters will be instructed to the jury that the patent is (not) in controversy."

And the Court said: "In this case I understand it is admitted in the indictment."

And thereupon Mr. Reames said to the Court: "Before your Honor passes finally upon that, I would like to leave that part and pass on a little further, and offer it again this afternoon, and offer some authority upon it."

Whereupon the Court said: "You can go on with the testimony, and later if it should be deemed material you can present the force and effect of it, but with that limitation, it will be admitted at this time."

There had been evidence as stated by the court tending to prove that the defendant LeMonn had made a visit east in the early part of 1912, and learned of the manufacture of this particular instrument, and that he sent letters and telegrams to the defendant Menefee with reference to the matter which letters and telegrams described said machine, stated that he, LeMonn, believed it to be a winner and advised the defendant Menefee to not sell any more of the capital stock of the company until the private stock of the defendants Menefee, LeMonn and Campbell had first been disposed of; that subsequent to the receipt of the said telegram the defendants Menefee and Campbell, at Portland, Oregon, caused the board of directors of the United

States Cashier Company to pass a resolution withdrawing all of the company's stock from the market and authorizing the defendants Menefee, LeMonn and Campbell to sell their own personal stock with the sales organization or sales force and the demonstration machines of the company, and that was the certain course of procedure referred to in the court's statement.

And thereupon the testimony of the witness was continued, and he testified that he disclosed to Mr. Bilyeu the basic principle, which was the connection of each individual key with a selector bar or rod, so that by a depression of that key the proper ejector or ejectors would be turned from a non-paying to a paying position. That Mr. Bilyeu said he would undertake the work, with the understanding that the results would be divided sixty per cent to the witness and forty per cent to Bilyeu, and that was agreeable to witness, and that they shook hands on it. That Mr. Bilyeu said to him, "I will take you out to my model maker," which he did, in South Portland, to Mr. Overlin; that he had not seen Mr. Overlin before, and that Mr. Bilyeu introduced him to Mr. Overlin and said that the witness had been associated with Mr. Potter in the development of the machine, and had not been treated properly by Mr. Potter; that witness had devised a machine of his own and arranged with Bilyeu to develop it, and wanted Overlin to undertake the manufacture of a model; that Mr. Overlin accepted, and they returned to town. That Mr. Bilyeu advertised for a draftsman, and put him to work in the Ainsworth Building; that the model was constructed, and that a month or six weeks after that time Mr. Bilyeu said to the wit-

ness one day that he had been thinking the matter over for a week past, and had decided that the witness did not own anything in the device, and went on to say that he had applied for a patent in his own name, and the witness said there was nothing further to do except for witness to make a better machine, and that Mr. Bilyeu said he could not do it.

The witness further testified that he went east the 2nd of May, 1910, and went first to the Comptograph Company, with sketches, and then to the Wales people, and finally arranged for the building of the machine, and completed it in August, 1910, and that was the Payograph machine. That he applied for a patent on the machine in August, 1911; that the first model was made in August, 1910; that the second model was completed in 1912.

The witness was then shown photographs of the exterior of the machine, and identified them as photographs taken in August, 1910, and of a machine he had just completed and demonstrated to the executive board of the Wales Adding Machine Company.

The witness then continued that he returned to Portland the latter part of August, 1910; that he knew of a certain machine of the United States Cashier Company, known as the Bank Cashier, had heard of it and seen it, but never examined it closely; that he thought the machine was one that was covered by the application over the names of Bullington, White and Overlin; that in the year 1910 he met Mr. Bullington, and that he exhibited the three photographs in evidence to Mr. Bullington, in

August, 1910. That he had met the defendant F. M. LeMonn in the office of the Payograph Company, in Detroit, in January, 1912, and that LeMonn told him that he had been at the office of the National Cash Register Company, and had there been told of the Payograph; that LeMonn had a little booklet descriptive of the Payograph, which he said had been given to him by the Paymaster. Witness identified a book which he said was exactly like the one LeMonn showed him; that it was issued by the Payograph Company, and that it was the one that Mr. LeMonn brought to him at the time, one exactly like it and of the same issue, and that LeMonn said he had received it from the National Cash Register Company.

Whereupon the Government offered the said booklet in evidence, to which offer the defendant Gernert objected; the court overruled the objection and the defendant Gernert asked and was allowed an exception to the ruling; the booklet was marked as Government's Exhibit Number 306, and is as follows:

The witness, continuing, said that the defendant LeMonn said that he had been told of the Payograph by the Paymaster, Mr. Myer, and wished to see it, and, after questioning by the witness, said that he had been with the United States Cashier Company, but was not with them at that time, had got through selling stock, and was east looking for other things to finance, and asked the witness if he did not want him to take hold of the Payograph, and finance it, which the witness said he did not. The witness said he demonstrated the Payograph to Le-

Monn; that Mr. LeMonn expressed himself as pleased with it, went on east, and left his address, with the request that the witness think over the matter of financing the proposition and communicate with him if they decided to take him on to do the work. That the machine he demonstrated to LeMonn was the one described in the little booklet, that there was no model of it. The witness further said he took half an hour to demonstrate the machine; that the machine would pay money, list it and add it; that he did not take the case off the machine, the mechanical part of it.

The witness, further testifying, said that he met Mr. Menefee in October, 1913; that Mr. Menefee came to his office in October, 1913, and told him that he was the President of the United States Cashier Company, and asked what they were going to do with the British patents, or if the witness had sold them, and he said he had not; that Menefee asked what they were going to do with them, and he said he had no plans other than to retain them; that Mr. Menefee then told him they were arranging for a syndicate in Britain to take over their British rights, and that he felt that upon investigation by the people there they might run upon the application and it might possibly interfere with the deal, and that he thought for the good of both it might be well to make some arrangement whereby the patent of the Cashier Company in Great Britain would be included with the patent of the Oviatt machine; that Menefee described to him the deal; that it was to be a million dollar corporation, of which \$200,000 stock was to be paid to the United States Cashier Company, and \$50,000 in cash,

which was to be divided between Mr. Bilyeu and the United States Cashier Company, and that if the witness would come into the deal it would be split in thirds. That the witness wanted him to combine their entire interests in one large corporation. The witness said he took the matter under consideration, and afterwards, in about two weeks, told Menefee he would not entertain the deal.

The witness further testified that subsequent to this authorization and at the request of the defendants Bilyeu and Menefee, he had met said defendants in Chicago and that they had attempted to get the witness to go in with them upon a proposition by the terms of which the Payograph was to be included in a deal that the defendants had pending in England and the two said defendants represented to the witness that on account of the said conflict in Great Britain between the machine of the United States Cashier Company and the deal of the defendants could not be closed without the cooperation of the witness. The witness further testified that he refused to consider said proposition.

On cross examination the witness testified, among other things, that he claimed to be the inventor of the selector bar as directly connected with the case; that he acquainted Bilyeu of his selector bar idea in July, 1909, for the purpose of having Bilyeu make a complete model; that the payograph would be a competitor of the United States Cashier Company's machines, were both machines on the market; and that the payograph machine was at that time in interference with the bank cashier in the patent office.

The Government introduced a letter dated June 27, 1913, from defendant Menefee to one Joseph Hunter in which the statement was made:

“We have known of this Payograph proposition for the last three years and also have had quite full and complete information in regard to its state of development, and also the design. Of course I do not know just now how far they have gotten along, but unless they have changed their design absolutely from the way it was put up to me by the engineer who invented it, I would not care anything about them from an opposition standpoint because they are on the wrong system and our severe experience with our own product makes us know that only the very best kind of a machine will servive the ordeal.”

And the defendant Menefee introduced a letter dated April 19, 1912, from the defendant Menefee to one Robb in which the following statement appears:

“I learned something further at Detroit yesterday in regard to the Payograph which may be of interest to you.

“I do not know that I can describe the machine fully, but I think I can, in a way that will give you an understanding of their plan, and what they claim.

* * * * *

* * * I understand a patent application was filed by Nelson Oviatt, covering the first model or plan and that he is trying to inject into it the features of the new machine. The inventor of the new

machine is not willing that this should be done. Also, I might add that, because of these differences of opinion, the inventor has resigned his position with the Payograph Company and I have made arrangements for him to go west and take up the work for us, not later than May 15th. I also understand from him that Oviatt has stated that his application and claim are so broad that it will cover the idea of attaching a paying machine to an adding machine, or using the same interchangeable, regardless of the way it is worked out or the mechanism employed to carry into effect the use of the two machines in conjunction. Mr. Hayes, the engineer, who has done all the work on the Payograph and whom I have hired, seems to have the opinion that the construction of a complete machine would not infringe the idea, but that possibly he might cover the idea of attaching to adding machines and suggests that our disabling key might put us in the conflicting class.

The witness then proceeded to demonstrate the Payograph machine to the jury, testifying as follows:

Q. Will you take that machine and demonstrate it to the jury? (Witness proceeds to demonstrate) Tell the jury what the machine is and what it is designed to do, and what it will do.

A. This machine here is not my invention, this machine is a stock adding machine made by the Wales Company in Wilkesbarre, known as the Adding Machine Company. This coin paying device is my invention and is connected to this adding ma-

chine, so that when the key is depressed here and this handle of the adding machine operated the is ejected here into the hand or envelope; it is listed on the paper of the adding machine here, and is added on the wheels of the adding machine here. The connect and disconnect is at this point. There is a large operating lever. (Operating machine) This is simply a connecting link from the coin paying mechanism to the adding machine. By taking out that thumb screw you disconnect all of the pay mechanism so that you use your adding machine separate from the paying, so that you can list and add without paying money, or without ejecting money, but when that link is attached by that thumb screw, then the operation of the adding machine also operates the paying machine over here, so that when you put down a key here and pull your handle, that amount will be ejected over here to the hand or envelope, recorded on the paper here and added on the wheels here. Whenever you wish to add and list without paying, as I have said before, take this thumb screw out and you at once have separated your adding and paying mechanism, or the machine can be lifted bodily from this and the adding machine taken off to other parts of the office and used independently of this.

Q. In other words, the machine is so constructed that you can use the adding machine with or without the coin paying mechanism?

A. Yes, sir.

Q. And they are detachable?

A. Detachable, yes.

Q. And so arranged that by the manipulation of this screw or device on the end of the machine the adding machine either will or will not work in conjunction with the coin paying mechanism?

A. That is right.

Q. In other words, to make it plain, if you are using the adding machine as such, by handling it in the manner you have described, you could mark the number of figures by depressing the proper keys indicating the proper amounts, and that would add into the adding machine, without working the coin paying mechanism at all.

A. Yes, sir.

Q. And then by replacing that screw, the adding machine would perform exactly the same work, and in addition to that the proper amount of change would be paid out of the coin paying mechanism?

A. That is right.

Q. Now, what is the feature of novelty about that arrangement and about that machine—what is the main feature of novelty?

A. The ability to separate the adding mechanism from the paying mechanism is one of the principal objects.

Q. Now, to what sort of adding machines can this coin paying mechanism be attached?

A. This coin paying mechanism has been attached to the Wales machine, to the Burroughs machine, and can be adapted to be attached to any regular type of adding machine.

Q. Do I understand you then that in the marketing of this machine you could simply sell the frame of the coin paying mechanism and they would connect it on to the regular adding machine, without the necessity of purchasing an adding machine?

A. This one here could be. This one would have to be taken into the shop and the key stems extended; that one there is a stock machine connected with the other machine.

Q. The machine you have been demonstrating now is the first model?

A. That is the first model.

Q. Have you the latest model of the payograph machine?

A. This is the latest model.

Q. Now, demonstrate to the jury the latest model.

A. This here is what is termed the Burroughs Visible Adding Machine; this here is the payograph with the extension or mezzanine keyboard, so that when you depress a key here you set the mechanism not only for the paying but also for the adding machine beneath, and pressing the corresponding key of the adding machine; then when you operate the handle here you not only list and add on the adding machine but you pay that amount over here; this can operate independent of this, that is the adding machine independent of the coin paying, simply by changing this button on this side. With it in position it would pay, list and add; with the button turned that way, it would add, list, but would not

pay. Then this machine, the adding machine, can be taken out bodily from beneath and used as an ordinary adding machine about the office the days they don't wish to pay off.

Q. Now, what is the feature of novelty in that machine, Mr. Oviatt?

A. The principal feature is the same as in that, ability to separate your adding mechanism from your paying mechanism.

Q. You claim to be the inventor of any part or portion of the adding machine?

A. No.

Q. What adding machine do you use in connecting your machine to it?

A. We are using right here the Burroughs.

Q. What is the reason, the main reason, for simply connecting your machine to it, instead of making an adding machine of your own?

Q. Well, there are many reasons. One reason is that we don't care to go into an experimental field and take our chance to patent suits with the adding machine companies. We also wish to avoid the expense incidental to the manufacture of adding machines. We get the support of the adding machine company and salesmen rather than their non-support. Furthermore, any company as a rule which has employees enough to warrant the using of a paying machine of this type already owns an adding machine. They pay off once a week as a rule, and by attaching to the adding machine which they already own they are saved the expense incidental to buy-

ing a complete adding mechanism, which we might otherwise have to devise and build into the machine.

Q. In other words, a company to whom you might want to sell already owning an adding machine would not have to buy the complete outfit?

A. No.

Q. Now to what machines, Mr. Oviatt, can you—to what sorts of adding machines and kind of adding machine can the payograph be attached, and from which it can be detached?

A. We can attach to the Wales, Burroughs, White, made in New Haven, Connecticut, to the Universal; that is owned by the Burroughs. That is practically all of the machines in the market having the ordinary type of key board.

Q. What is the fact as to whether or not the adding machines you have mentioned are the principal adding machines that there are being manufactured and sold in the United States?

A. There are only two principal adding machines, that is the Burroughs and the Wales, at the present time. The White in New Haven hasn't attained very much publicity.

Q. Now is it—this machine that you have demonstrated before the jury, this last machine, Mr. Oviatt that is in interference with the machine of the United States Cashier Company, known as the Bank Cashier?

Mr. Pipes: Now, may it please the court, that still raises the question.

Mr. Reames: I wont insist upon it until I present my point."

There was no other evidence offered by either party or received in the case tending to prove that the defendant Bilyeu had communicated to any of "the defendants" or to the defendant Gernert the matters and facts testified to by the witness Oviatt, nor was there any other evidence offered to prove that any of "the defendants" or the defendant Gernert had knowledge of the matters and facts testified to by the defendant Oviatt, except that incorporated in this Bill of Exceptions.

To each and every question and answer of the testimony of the last named witness, the defendant Gernert, by the stipulation hereinbefore referred to, had an objection which was overruled, and to which action of the court an exception was duly granted.

Whereupon the United States Attorney, on behalf of the United States, offered in evidence and the same was duly received, the following exhibits, the Government having previously proven that each, every and all of said letters had been written by the said respective defendants to the said respective addressees, and that the said writers of said letters had either deposited or caused said letters to be deposited in the mails of the United States for mailing and delivery at the date of said respective letters, and the Government had theretofore proven the genuineness of each of the notes and receipts below mentioned.

Ex. No. 66, letter from Menefee to Gernert, May 16/12.

Ex. No. 124, circular letter from LeMonn to all salesmen including Gernert, Mar. 6/11.

Ex. No. 125, circular letter from LeMonn to all salesmen including Gernert, May 29/11.

Ex. No. 128, circular letter from LeMonn to all salesmen including Gernert, June 19/11.

Ex. No. 131, circular letter from LeMonn to all salesmen including Gernert, July 18/11.

Ex. No. 133, circular letter from LeMonn to all salesmen including Gernert, July 25/11.

Ex. No. 154, circular letter from LeMonn to all salesmen including Gernert, Dec. 2/11.

Ex. No. 156, circular letter from LeMonn to all salesmen including Gernert, Dec. 9/11.

Ex. No. 157, circular letter from LeMonn to all salesmen including Gernert, Dec, 20/11.

Ex. No. 267, circular letter from Menefee to all salesmen including Gernert, May 16/12.

Ex. No. 287, note from Zufall to Gernert, Dec. 9/11.

Ex. No. 288, letter from Gernert to LeMonn, Feb. 24.

Ex. No. 289, letter from LeMonn to Gernert, Mar. 2/12.

Ex. No. 290, letter from Menefee to Gernert, Dec. 5/11.

Ex. No. 291, letter from Gernert to Menefee, Dec. 14/11.

Ex. No. 292, letter from Menefee to Gernert, Dec. 9/11.

Ex. No. 294, letter from LeMonn to Gernert, Mar. 2/12.

Ex. No. 298, circular letter, from LeMonn to all salesmen including Gernert, June 5/11.

Ex. No. 376, circular letter from LeMonn to all salesmen including Gernert, July 15/11.

Ex. No. 440, letter from Menefee to Gernert, Mar. 12/12.

Ex. No. 242, letter from Gernert to C. B. Clark, July 11/12.

Ex. No. 243, receipt from Gernert to C. B. Clark, Aug. 9/12.

Ex. No. 244, letter from Menefee to C. B. Clark, Aug. 19/12.

Ex. No. 295, letter from LeMonn to Gernert, Mar. 23/12.

Each of which said exhibits, by stipulation of counsel for the defendant, Gernert, and for the United States of America, and by the direction and with the consent of the court, have been transmitted to the Circuit Court of Appeals with the Bill of Exceptions of the defendant, Frank Menefee, and it has been stipulated that said numbered exhibits may be used, read and referred to by counsel to the same extent as though copied in as a part of this Bill of Exceptions.

Mr. Reames: I am now about to offer in evidence Government's Identification 115, which forms

the basis of overt act No. 1, a letter written by Mr. Bonnewell. I have a stipulation with Mr. McHenry to the effect that the letter was written by Mr. Bonnewell and mailed, and I want him here before I introduce it.

Mr. Maguire: Before the Government offers in evidence any evidence of overt acts, I would like at this time that the court require the United States Attorney to declare whether he elects to prosecute these defendants for a violation of Section 37 of the Penal Code, or for a violation of Section 215 of the Penal Code. The indictment is drawn in such a general manner that there will be difficulty in determining except by the number put at the top of the indictment whether it is a violation of Section 37, or a violation of Section 215, and in order that the defendants may preserve the record, it seems to me at this time we are entitled to know from the District Attorney upon which section he elects to proceed.

Mr. Reames: As stated in my opening statement to the jury, and as stated in the indictment itself, this is an indictment for a violation of Section 37 of the Penal Code.

Mr. Maguire: Does the United States Attorney contend that the various overt acts set out in the indictment were the overt acts referring to, and in pursuance of the particular conspiracy set out in that indictment?

Mr. Reames: Yes.

Mr. Maguire: Refer to no other.

Mr. Reames: Yes, the ones attempted to be proven at this time.

Mr. Maguire: There have been offered and received numerous exhibits from Exhibit 120 to Exhibit to 272, consisting of letters purporting to have been signed and mailed by the United States Cashier Company and by Mr. LeMonn as its sales agent, and Mr. Menefee as its president. Do I understand that it is the contention of the Government that these letters were written and mailed in the United States mail?

Mr. Reames: Yes.

Mr. Maguire: That is a matter of record now, so we may proceed and rely upon it?

Mr. Reames: Yes. The evidence of the Government has offered as to the manner in which these exhibits came into our possession, and the Government now claims it is proved by circumstantial evidence that these letters and various exhibits referred to by counsel were written and mailed in the United States mail in the ordinary course of business.

Mr. Maguire: And were mailed and relate to and refer to the particular conspiracy set out in the indictment?

Mr. Reames: Yes.

Mr. Maguire: And were in execution of that particular conspiracy?

Mr. Reames: I think so. The next is Government's Identification 212. That is the one identified by the witness Klein as having been received by him in New York City.

Mr. Pipes: No objection to the identification on our part.

Mr. Reames: Then may we have the admission that on July 23, 1912, Mr. Frank Menefee, either deposited or caused to be deposited this letter of date July 23, 1912, in the United States mails at Portland, Oregon, and at that time it was enclosed in an envelope, and had its postage fully prepaid?

Mr. Pipes: Yes.

Mr. Reames: The Government then offers in evidence letter of date July 23, 1912, Government's Identification 212, identified by the witness E. Klein when he was on the stand, as having been received by him at New York City, a few days after July 23, 1912, and the Government offers it as forming the basis of Overt Act No. 2.

Mr. Maguire: On the part of the defendant Gernert objection is offered to this testimony, on the ground that it is not an overt act for the purpose of executing the conspiracy set out in the indictment, for the reason that assuming the Government's contention to be true, and the allega-

tions of the indictment to be true, the conspiracy, if any, had been fully executed and terminated and performed, at least as early as June, 1911.

Now, may it please the Court, the defendants in this case are charged not with having devised a scheme to defraud, not with violation of Section 215 of the Penal Code, but with having conspired to commit an offense against the United States. The District Attorney has conceded that all the letters which have been offered in evidence, and which he claims, and which of course for the purpose of this argument is admitted went through the mails, were written and mailed for the purpose of executing the scheme to defraud, which he has set out and alleges to be true, in his indictment. Now, the gist of that offense is not in the promoting of the scheme, but it is in the use of the mails to carry out an alleged scheme to defraud. The defendants are charged in this indictment with having conspired and confederated together to commit that particular offense; that is the offense of placing a letter in the mails for the purpose of executing the particular scheme to defraud set out in this indictment. Now, when that offense, that is, when the objects of the conspiracy have been consummated, there can be no further acts committed by any one, to be charged in the indictment or to be offered or admitted in the evidence, for the crime, if any, has been committed.

Court: This indictment charges a continuing conspiracy.

Mr. Maguire: Quite so, your honor. And under the continuing conspiracy the statute of limitations does not commence to run from the first overt act, but from the last overt act, but it must be an overt act for the purpose of committing the particular offense set out in the indictment. Now, the particular offense set out in the indictment is the use of the mails for the purpose of defrauding, the mailing of a letter, rather, to carry out a scheme set out in the indictment, and the District Attorney says that the scheme had been formed in September, and that these particular letters set out in 1911 and offered in 1911 were for the purpose of executing the scheme. Now, the conspiracy must have existed in the minds of the defendants prior to the devising of the scheme, and when that offense was completed or committed, if any at all,—of course, I merely assume that for the purpose of this argument, because it is in effect a demurrer to the evidence and to the indictment—when that was completed, then there was nothing further to do. Now, let's take this state of facts, that counsel has put in here. He said that these defendants got together in September, 1910, for the purpose of devising and executing a scheme to defraud. Now, that offense was committed, and that conspiracy was consummated, at the time the first letter was placed in the mails for the pur-

pose of executing the scheme. Now, any further acts, any further mailing of letters, were separate and distinct offenses. Any agreement or conspiracy was a separate and distinct conspiracy, and cannot be joined in the same court of the indictment, and it is a question whether they are permissible to be charged in the same indictment, and unquestionably that cannot be done in the same count of the indictment. Therefore, under the District Attorney's own admission these particular letters did not refer to completing and committing an offense, if any offense at all was committed.

Argument of Counsel.

Court: I understand your position, and I don't think it is necessary to take up any more time on it. I have ruled on that question a good many times, and as long as the indictment charges a continuing offense, as it does in this case, I think it is competent for the Government to give in evidence any act that may be selected by it as an overt act, providing it has charged a continuing conspiracy, and I don't think the first overt act terminates the conspiracy so the objection will be overruled.

Mr. Maguire: Save an exception.

Mr. Pipes: That applies also to all the other defendants.

Court: The same objection goes to all the defendants, and an exception.

Whereupon, the United States of America offered in evidence each and every letter set forth in the indictment as overt acts, being therein numbered as overt acts I. to XVI, each defendant admitting that said letters were written and mailed at the times and places mentioned in the indictment to the admission of each of which, for the reason hereinbefore set forth the defendant Gernert duly made objection, which objection was overruled by the Court. To the action of the Court in overruling said objection and in admitting said letters in evidence as proof of the overt acts set out in the indictment, the defendant Gernert was allowed an exception.

Whereupon, the United States of America rested its case, and the following proceedings were had:—

The defendant, Gernert, offered in evidence in his behalf the following exhibits, which exhibits were received in evidence without objection:—

Ex. No. T, note, Dec. 2/11.

Ex. No. U, Contract to Purchase, from Lew Paramore to Gernert, Dec. 2/11.

Ex. No. V, Contract to Purchase, from W. A. Decker to Gernert, Nov. 24/11.

Ex. No. U-5, Letter from Gernert V-788, Mar. 6/10.

Letter from Allen Todd to Gernert, Mar. 7/10.

Letter from Allen Todd to Gernert, Mar. 10/10.

Letter from Allen Todd to Gernert, June 8/10.

Circular letter from Company.

Letter from LeMonn to Gernert, Mar. 24/11.

Letter from E. C. Baker to Gernert, May 23/11.

Letter from LeMonn to Gernert, May 23/11.

Letter from Menefee to Gernert, May 18/11.

Circular letter from LeMonn to Gernert, May 25/11.

Letter from Menefee to Gernert, Sept. 18/11.

Letter from LeMonn to Gernert, Nov. 10/11.

Letter from LeMonn to Gernert, Dec. 2/11.

Letter from Menefee to Gernert, Dec. 21/11.

Letter from Menefee to Geo. H. Moore, Feb. 9/12.

Letter from Menefee to Leavenworth St. Bank,
Feb. 9/12.

Letter from LeMonn to Gernert, June 15/12.

Letter from LeMonn to Gernert, Feb. 6/12.

Letter from LeMonn to Gernert, Feb. 19/12.

Prospectus (The Automatic Cashier), Twentieth
Century Wonder.

Each of which said exhibits, by stipulation of counsel for the defendant, Gernert, and for the United States of America, and by the direction and with the consent of the Court, have been transmitted to the Circuit Court of Appeals with this Bill of Exceptions and hereby made a part hereof as fully and completely as though copied into this Bill of Exceptions.

Whereupon, the defendant, Frank Menefee, took the stand, being first duly sworn, testified among other things, as follows:

Q. Mr. Menefee, in the closing of the examination Saturday I had just begun to ask you about

the establishment of agency for the sale of machines. I will ask you as to whether or not you established such agencies and where, in what parts of the country?

A. We established a number of agencies. That is, we made an arrangement for agents who would take the sale of the machine as soon as they were on the market. I am not certain as to the exact date, but the first one that was arranged for was in Illinois with a company through a Mr. Griffith, and I think that was probably March or April, 1911.

Q. And were there other agencies?

A. Yes, there were a number of others. I could not give the dates of them—I haven't any of the contracts here; but during 1912 and also during 1911 there were a number of agencies arranged. I remember particularly that Mrs. Armstrong was promised the agency for Southern California and Arizona and afterwards got her contract. And a Mr. Wolcott had the agency for Ohio. And I think the Hall boys were later given, on a sort of promise, an agency for Iowa. Mr. Dix at St. Louis was given an agency contract for Missouri, and about the last, and then there was a Mr. Dickman that arranged for an agency for some of the southern states—I think, Florida, Georgia and the Carolinas, something like that. And Mr. Tillinghast, for the State of New York, and Mr. Robinson Swift, for the New England States.

Q. Now in contemplation of the manufacture of what machines were the agencies formed?

A. Well, the general line of machines, the first that we put on the market; that is the pay-roll machine principally—probably afterward termed the pay-roll machine. It was then being called the cashier machine.

Q. I will ask you Mr. Menefee as to whether or not you solicited these agencies or did they come to you.

A. No, they solicited us for the territory.

Q. What was the cause for that do you know?

A. Well, because they had confidence in the machine being a commercial article, and one that would be valuable to an agency.

Q. Had they seen these demonstrations?

A. Yes, they had seen the machines, all of them.

Q. I speak of that, this latter question, with reference to the manner in which these machines were received throughout the country where they were shown.

A. They had all seen the machines demonstrated, and most of these people I refer to had been in Portland, as well, and saw the factory, and had visited with us here for a number of days, I think all of them.

Q. Here in the city?

A. No.

Q. And was not in the management of the Company itself, I imagine?

A. No, not in any way. He was entirely subject to the orders of the rest of us inside.

Q. When the demonstration of the machines was given to you, do you remember what particular machine was demonstrated by Mr. Gernert, for example?

A. I think Mr. Gernert demonstrated the Bilyeu cashier almost exclusively, if not quite so.

Q. That is the machine which was developed into the one Mr. Baker—

A. Yes. It is the Bilyeu cashier, the first model of the paying machine.

Q. And for which a patent was issued?

A. Yes.

Q. Now, Mr. Menefee, I believe you have spoken about the literature—the advertisements and the circulars and matters of that kind which have been offered in evidence here. I refer particularly to the newspaper advertisements and your reports of assets and liabilities, and the reports and statements in relation to the prospects of the concern, which are here. That was part of the literature of the Company, and as such you issued it, did you not?

A. Yes, we did.

Q. And you assume responsibility for that; the office assumes responsibility for that?

A. Yes, the office has to take the responsibility for that. The salesmen have nothing to do with that.

Q. They were entitled to use that just as much as the public generally?

A. Yes, they were. Yes.

Q. Had seen the manufacturing establishment?

A. Yes.

Q. And what were you doing out there?

A. Yes.

Q. After the factory was built?

A. Yes. And I will take that back about that being in March, 1911, that the Chicago agency was established. That was in 1912, I think, because it seems to me that I remember very distinctly Mr. Welky, who was the main one in the syndicate forming the company to sell that machines in Illinois, being here when the factory was running at Kenton.

Q. In that connection did Mr. Gernert have any contract of agency or promise of such contract?

A. Of course, he had asked to be considered; and Mr. Todd who was in charge before I was had held out inducements to him and talked to him about the Pittsburg agency; and had Mr. Gernert remained with us, it is probable that he would have had an agency contract with the company.

Q. How did he come to be appointed as assistant sales manager?

A. Mr. Gernert was with the company before my time as manager, and he was a man who knew about the selling and the field work pretty well, and

was one that for some time there we depended on in assisting us in the field work and training other salesmen; but he was only assistant sales manager purely in the field and outside ways, and had nothing to do with the inside work or the office.

Q. He was not a member of the board of directors at any time?

A. No, not at any time.

Q. Never an officer of the company?

MR. CAKE: Q. I have here a statement which Mr. House very kindly furnished me, stating that Mr. O. E. Gernert went into the employ of the company in April, 1910, and continued until April 1st, 1912. That is correct is it?

A. No. I don't think Mr. Gernert did any work particularly for the company after the first of January, 1912.

Q. The first of January, 1912?

A. Yes.

Q. Speaking of Mr. Gernert, was there an agency for the State of Washington which Mr. Gernert was anxious for?

A. Yes, he was talking about that. I think that was perhaps in 1912. That was after he was really not working for the company. He undertook to make a syndicate and get the Washington agency.

MR. PIPES: The agency to sell machines?

MR. CAKE: What kind of an agency was it?

A. To sell machines.

Q. When were they manufactured?

A. Yes, but he did not make his arrangement. The defendant Menefee, while being cross examined by the United States Attorney in relation to certain private stock deals testified in part as follows:

Q. Bert Sallaberry has testified he paid thirty dollars a share for a large block of stock in the fall of 1913 purchased from Mr. Todd.

A. I sold that stock to Mr. Todd for six dollars a share. He paid cash for it before I knew anything about the sale.

Q. Then Mr. Todd made a profit of twenty-four dollars a share?

A. If he sold it for thirty dollars, he did.

Q. John Sallaberry during the same period of time bought a large block of stock at thirty dollars a share.

A. That was the same price, six dollars a share.

Q. John Irrigoin bought a large block of stock at thirty dollars.

A. That was six dollars a share I received.

Q. Mr. E. A. Mulkey—

A. (Interrupting) I received the same for that.

Q. He bought a large block of stock at thirty. Did Todd make twenty-four dollars a share?

A. He got it from me at six.

Q. Mr. R. L. Anderson bought a block of one hundred shares.

A. All the stock I sold to Todd, he paid me the cash at six dollars a share.

Q. Lew Paramore bought fifty shares of your stock through Mr. Gernert at twenty dollars a share.

A. That was not part of this block. That was stock I had bought off the market before.

Q. How much did you get out of that transaction?

A. The expenses on that little trip of Mr. Gernert, in which he sold a few sales over there, that was a losing proposition altogether. I don't know what I got.

Q. Fifty shares of stock, twenty dollars a share, one thousand dollars, and you didn't get anything out of it?

A. No, I didn't say I did not get anything out of that item, but the stock sold was under an arrangement whereby he was to go out and get a commission for the sales and turn in the proceeds to me. The expenses were advanced. The trip did not pay expenses and commissions, and we lost out on it.

Q. Well now, Clarke, one hundred shares at twenty dollars a share, C. B. Clarke.

A. That was issued from my stock and I got a four hundred dollar payment, I think, on the first sale and paid the commission out of that. The sixteen hundred dollars, the second sale, the note is turned over to the company, is now held by the company and by Mr. Mears. I really have never had credit on the books for it. I furnished the stock.

Q. Now, there was Moore, twenty dollars a share. How much did you get out of that?

A. The net out of that should have been fourteen if the commissions that we earned paid the boys' expenses, but they didn't do it.

Q. There is the sale to Deckers, five shares, twenty dollars a share.

A. That was the same lot. My answer to that is the same.

Q. John Scott, twenty-five shares at twenty dollars a share.

A. The same answer to that. The Commission was thirty per cent. twenty-five to the agents and five per cent overhead to Mr. Gernert. If he made the sale himself, he got all the commission.

Both parties having rested their case, the defendant Gernert moved the Court as follows:

Comes now the defendant, O. E. Gernert, and prays the court to direct the jury in the above entitled cause to return a verdict of not guilty as to the defendant, O. E. Gernert, upon the following grounds and for the following reasons:

I.

That the indictment does not state facts sufficient to constitute a crime.

II.

That the indictment charges more than one crime.

III.

That there is no evidence tending to show the formation of any conspiracy described in the indictment.

IV.

That the evidence is not sufficient to show any confederation agreement or conspiracy on the part of the defendant, O. E. Gernert, with the defendants named in the indictment.

V.

That the evidence shows that the conspiracy, if any, was terminated and completed more than three years prior to the filing of the indictment.

VI.

That upon the face of the record it appears that none of the overt acts charged in the indictment were committed prior to the termination of the conspiracy and effectuating its said object.

VII.

That it appears from the face of the record that the defendant, O. E. Gernert, was not associated with the conspirators named in the indictment nor employed by the United States Cashier Company within three years of the filing of the indictment.

ROBERT F. MAGUIRE,
Attorneys for O. E. Gernert.

Whereupon the Court heard argument of counsel and denied said motion and refused and failed to direct the jury to find the defendant, O. E. Gernert, not guilty. To which action of the Court and to his said refusal and failure to so instruct the jury, an exception was duly allowed to the defendant, O. E. Gernert.

Before counsel argued the case to the jury the defendant O. E. Gernert in writing in due and proper form and manner, requested the court to give the following instructions:

I.

The defendants in this case are charged by the indictment with the crime of conspiracy, in that they conspired and agreed together to violate Section 215 of the Penal Code of the United States by conspiring and agreeing to devise a scheme to defraud, and to execute the same by the use of the postal establishment of the United States.

The following are the essential elements of the indictment:

First, that there was a conspiracy, agreement or understanding upon the part of each and all of the defendants:

Second, To devise the particular scheme to defraud set out in the indictment, and

Third, To use the post office establishment of the United States for the purpose of executing the scheme.

It is therefore incumbent upon the government to establish, beyond a reasonable doubt, not only that the defendants and each and all of them conspired and agreed together to devise this particular scheme, but at the time it was a part of the conspiracy and a part of their understanding that the scheme to defraud should be executed by the use of the Post Office establishment of the United States. And if, as to any one or more of the defendants the government shall fail to produce competent evidence to prove any or more of those elements, then it is your duty to find such defendant or defendants not guilty.

II.

Under the doctrine of law that I have just stated, even though you might find from the evidence that the defendants agreed together to devise a scheme to defraud, yet, if they did not at the time of forming a conspiracy have in their minds the use of the mails of the United States for the purpose of executing such scheme to defraud, then the government would have failed in its case and you should find the defendants not guilty.

III.

Again, even though you should find from the evidence that fraud or injury resulted from the acts of one or more of the defendants and was brought about or executed in whole or in part by use of the mails, yet, if you could not find that there was an agreement or understanding between the defendants and all of them to devise such a scheme and to execute it in the manner herein-

before alleged, then you must find the defendants not guilty.

IV.

Gentlemen of the Jury: You are further instructed that it is not sufficient for the government in this case to show that certain of the defendants combined to perform certain acts and some one or more combined with others to perform different acts, even though the defendants had a similar purpose in view, but the evidence in this case must show beyond a reasonable doubt that each and all of the defendants agreed and conspired together to do these things.

V.

While a conspiracy may be proven by circumstantial evidence, yet the circumstances upon which the government relies for its proof must be such as to show that there was an agreement or understanding, and the mere fact that the testimony in the case may show that two or more defendants on different occasions did acts of a similar nature looking toward the same end or result, would not constitute, as a matter of law, a conspiracy. There must be evidence tending to show that the defendants and each of them agreed and combined together to do the acts set out in the indictment.

VI.

The existence of a conspiracy cannot be established as to one of the defendants by the acts or declarations of another defendant committed in his absence and with-

out his knowledge or concurrence, nor can the connection of a particular defendant to a conspiracy be established or proved by what is said or done by another person alleged to be a co-spirator. Therefore, in determining whether or not there was a conspiracy and whether or not any particular person was a party to such conspiracy you are limited to the things done by him, and unless you find beyond a reasonable doubt from his acts that he had an intent to defraud and that he had knowledge that the Company did not have, own or control the patents which it claimed to have and that he knew the Company did not intend to manufacture such machines (if you find from the evidence it was not their intention so to do) and that he knew that the Company did not have bona fide orders for its machines and that he knew that the Company would not make large profits and that he knew that the financial condition of the Company was not excellent but was insolvent and that the liabilities of the corporation greatly exceeded its assets and that he knew that the stock by reason of these things was worthless. In other words the government has alleged in the indictment that the stock in this corporation was worthless by reason of certain alleged facts and conditions which it sets out in detail, and before you can find any particular defendant guilty under this indictment it will be necessary for you to find beyond a reasonable doubt that such defendant knew that the stock of the Company was worthless because of the particular matters which the government charges.

VII.

The mere fact that any one of the defendants may have made statements which were false or misleading in order to induce others to purchase stock in this corporation, would not of itself justify you in finding him guilty of the crime of conspiracy as charged in this indictment unless you further find that the defendant made such statements knowing that the stock he was offering for sale was worthless.

VIII.

The mere assertion by a salesman that certain stock offered for sale was Company stock instead of personal stock would not justify you in finding such salesman guilty of the crime charged in this indictment. There is no difference between Company stock and personal stock, it is all stock in the United States Cashier Company, and if such salesman at the time of making such representations did not know or have knowledge of the matters which the government alleges rendered said stock worthless, but believed said stock to be valuable, then no presumption of fraudulent intent would arise and said defendant would not be guilty of the crime charged and you should find such defendant not guilty.

IX.

Gentlemen of the Jury: You are further instructed that an agent has the right to rely and act upon any statements made to him by his principal or employer without inquiry as to whether or not they are true, unless, of course, it is apparent from their face that they

cannot be true, and if an employer informs an employee that certain facts exist and are true and that certain representations or promises may be made or carried out, the agent has the right to repeat these statements to such person or persons whom he has a right to interest in his project without being responsible for them, even though it afterwards transpires that they are not true.

X.

You are further instructed that so far as the stock salesmen were concerned they were and are not officers of the Company and they stood in no fiducial relation toward its stockholders or toward such persons as it might be their duty in the course of their employment to endeavor to induce to purchase stock of the Company, and such salesmen had the right to freely contract with the Company and had the right to obtain the best contract they could for themselves without being guilty of fraud or wrong doing, and the mere fact, if you shall find it to be a fact, that they received a large commission, is not of itself any evidence of fraud or wrong doing on their part. They had a right to place whatever value they might desire upon their services and to obtain and make the best bargain they could with their prospective employers. The business of selling stock in a corporation or obtaining subscriptions to the same is a legitimate business and there is no presumption or suspicion of any kind against a man who engages in such business.

Exaggeration or puffing of the value of an article or enterprise does not constitute a crime and is not criminal

or fraudulent unless the person making such statements intends thereby to defraud the purchaser.

X-A.

There is no presumption from the fact that a statement is false that it was made with a fraudulent intent.

Southern Development Co. v. Silva, 125 U. S.
248.

XI.

It is incumbent upon the government to show that the representations or statements made by any one of the defendants were not only untrue but that the defendant knew them to be untrue, and in addition to those two elements intended thereby to injure and defraud.

XII.

There is no presumption of fraud from the fact that a glittering and glowing promise may have been made and not carried out, unless it shall appear that the person who made such promise knew at the time of making the same that it could not be carried out and would not be carried out.

(Signed) Robert F. Maguire,
Attorney for O. E. Gernert.

Whereupon the Court failed, neglected and refused to give instructions III, IV, VI, VII, VIII, X, X-A, XI and XII, to which failure and refusal of the Court an exception was granted to the defendant, O. E. Gernert.

And thereafter the Court instructed the jury in full as follows: which are all the instructions that the Court gave to the jury:

“You are to be congratulated that your labors in this case are about to end. You have sat here through a long and protracted trial, listening to the testimony and the arguments of counsel, and their construction and application of the testimony. I now ask your careful attention while I attempt to state to you the issues you are to determine and the rules of law by which you are to be guided in arriving at your verdict. When I have done this, the duty of the court in this case ends, and the responsibility rests with you.

“The defendants Frank Menefee, F. M. Lemonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine, and Oscar A. Campbell have been jointly indicted by the grand jury of this district charged with having entered into a conspiracy to commit an offense against the United States by violating what is commonly known as the Postal Fraud Statute. The defendants Hunter, Hopson, and Muraine are not on trial. The court has sustained a motion for a directed verdict as to the defendant Bilyeu, on the ground that no substantial testimony was offered by the Government to connect him with the conspiracy charged in the indictment, and therefore, whatever conclusion you may come to as to the other defendants, it will be your duty to return a

verdict of not guilty in favor of the defendant Bilyeu.

“The indictment is based on Section 37 of the federal penal code, which, for the purposes of this case, provides that, if two or more persons conspire to commit an offense against the United States, and one or more of such parties do any act to effect the object of the conspiracy, each of the parties thereto shall be guilty of a crime and punished accordingly. It is important, therefore, at the outset that you have a clear conception of what constitutes a crime under this section, and of the evidence necessary to establish it. I therefore repeat the statute: It is that, if two or more persons conspire to commit an offense against the United States, and one or more of such parties do any act to effect the object of the conspiracy, each of the parties thereto shall be guilty of a crime.

“You will observe that there are three essential elements necessary to constitute a crime under this statute. First, there must be the act of two or more persons conspiring and confederating together. One person cannot conspire with himself, and therefore there must be at least two persons acting together in order to constitute a conspiracy. Second, it must appear that the purpose of the conspiracy was to commit an offense against the United States, that is, to violate some law of the United States. And, third, one or more of the conspirators, after the conspiracy has been formed, must do some act to effect

the object thereof. Each of these elements is an essential ingredient of the crime charged, and must be established by the Government, to your satisfaction beyond a reasonable doubt, before you can find a verdict in its favor.

“Now, taking them up in their order: A conspiracy is a combination of two or more persons, by concerted action, to accomplish a criminal and unlawful purpose, or some purpose not in itself unlawful or criminal by criminal or unlawful means. A common design is the essence of a conspiracy, and it is therefore necessary, in order to prove a conspiracy, for the Government to show a combination of two or more persons, by concerted action, to accomplish a criminal purpose. It is not necessary, however, for the Government to prove that such parties met together and entered into an explicit or formal agreement to that effect, or that they directly, by words or in writing, stated what the unlawful scheme was to be, or the details of the plan or means by which it was to be made effective. A conspiracy may be, and usually is, shown and proven by circumstances. Persons who contemplate committing a crime do not ordinarily place their intentions in writing, nor enter into any formal agreement for that purpose; but their agreement or understanding is generally to be determined from their acts and conduct and the entire circumstances surrounding their relationships and transactions.

“Guilty connection with a conspiracy may be established by showing association of the persons accused in and for the purpose of prosecuting the illegal object. It is enough if the minds of the parties meet understandingly so as to bring about an intelligent and deliberate agreement to do the act and commit the offense charged, although such agreement be not manifested by formal words.

“While a conspiracy may be proven by circumstantial evidence, yet the circumstances relied on for the proof must be such as to show that there was a common agreement or understanding, and the mere fact that two or more persons, on different occasions, did acts of a similar nature looking toward the same end or result, would not constitute, as a matter of law, a conspiracy, unless there was a common design and intention. The evidence must show that the parties accused, and each of them, agreed and confederated together to do the acts charged.

“Each party to a conspiracy must be actuated by the intent to promote the common design, but each may perform separate acts, or hold distinct relations, in promoting such design. Thus, if two persons pursue by their acts the same object, by the same means, one performing one part and the other another part, so as to complete it, with a view to attaining the object they are pursuing, that will be sufficient to constitute a conspiracy. Nor is it necessary that the conspirators should be acquainted

with each other, or that each should know the exact part to be performed by the other in the execution of the common design. It is enough if two or more persons, in any manner or through any contrivance, positively or tacitly come to a mutual understanding to accomplish a common unlawful design. In other words, where an unlawful end is sought to be effected, and two or more persons, actuated by a common purpose to accomplish that end, work together in any way in pursuance of the unlawful scheme, every one of such persons becomes a member of the conspiracy, although the part that he was to take therein was a subordinate one, and was to be executed at a remote distance from the other conspirators.

“Again, one who, after a conspiracy is formed, with knowledge of its existence, joins therein and aids and participates in its execution, becomes as much a party thereto from that time on as if he had been an original conspirator. Furthermore, where two or more persons are proven to have combined and confederated together for some illegal purpose, any act done by one of the parties, in furtherance of the common design and with reference to the common object, is in law the act of all, and therefore proof of such act will be evidence against any of the others who are engaged in the same conspiracy.

“It is also true that any declaration by one of the parties, in furtherance of the conspiracy or in execution thereof, during the pendency thereof, is not only evidence against himself, but evidence against

the other parties, who, when the conspiracy is formed, are as much responsible for such declarations and acts to which it relates as if made or committed by them. This rule applies to the declarations and acts of a conspirator although he may not be under prosecution or on trial. His declarations are equally admissible with those of the parties under indictment and being tried. But the declaration of a conspirator not in execution of the common design, or merely narrating past events, is not evidence against any of the parties other than the one making such declaration.

“One cannot be made a member of a conspiracy except by his own conscious act, and not by the acts and declarations of another.

“The second essential element of a conspiracy, so far as the case in hand is concerned, is that its purpose was to commit an offense against the United States.

“The law in force at the time it is alleged the conspiracy charged in the indictment was formed and existed provides that whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations or promises, shall, for the purpose of executing such scheme or artifice or attempting to do so, place or cause to be placed any letter, postal card, package, writing, circular, pamphlet, or advertisement in any postoffice, to be sent or delivered by the postoffice

establishment of the United States, shall be guilty of a crime and punished accordingly.

“It is this statute the defendants are charged with having conspired to violate.

“The postoffice establishment of the United States is a public agency, created and maintained by the Government at public expense for the convenience of all the people. It is important, therefore, that this agency should not be used for the purpose of promoting fraud, and Congress has passed the law to which I have called your attention prohibiting such misuse of the mails, and it is the duty of courts and juries to enforce this statute whenever and however violated.

“To devise, within the meaning of this statute, means to form a scheme, to lay a plan—to contrive. A scheme is a design or plan formed to accomplish some purpose. An artifice is an ingenious contrivance or device of some kind, and the term as used in the statute is equivalent to trick or fraud. To defraud implies or includes all acts, omissions, and concealments which involve a breach of legal or equitable duty, trust or confidence generally imposed, and are injurious to another, or by which an undue and unconscionable advantage is taken of another. It means to wrongfully deprive one of something he already has. Fraudulent pretenses, representations, or promises mean such fraudulent suggestions or representations of an existing or past fact or promise as to the future, by one who knows

it not to be true, as are adapted to induce the person to whom they are made to part with something of value. It is necessary, therefore, that it should appear, to your satisfaction, from the testimony and beyond a reasonable doubt, that the conspiracy entered into by the defendants, if there was such a conspiracy, was to devise a scheme or artifice to defraud, or to obtain money or property by means of false and fraudulent pretenses or representations, to be effected by the postoffice establishment of the United States.

“The third essential element of the crime charged is that one or more of the conspirators should, after the conspiracy was formed and during its existence, do some act to effect the object thereof. And the act of one conspirator for this purpose is, in law, the act of all.

“With this general statement of the law, we come to a consideration of the specific charges against the defendants on trial, and upon which they are to be convicted or acquitted.

“The indictment, which forms the basis of the charge, after alleging the incorporation of the United States Cashier Company, with an authorized capital of \$1,200,000 divided into 120,000 shares, of the par value of \$10 each, and the official relation the several parties bore to such corporation, charges in brief that, on or about the first day of September, 1910, the exact date being to the grand

jury unknown, the defendants on trial and the other parties jointly charged with them conspired and confederated together to devise and execute a scheme to defraud, to be effected by means of the postoffice establishment of the United States, to obtain money and property, by means of false and fraudulent representations, pretenses and promises, from some 55 persons named in the indictment, and designated and referred to as "investors," and other persons to the grand jury unknown and the public generally, by inciting and inducing such persons to open correspondence with the defendants and the corporation, and to purchase from them and the corporation shares of stock in such corporation, paying over and delivering to the defendants in exchange therefor money and property; that such purchases were to be induced by means of false and fraudulent representations and statements by the defendants, in newspapers, pamphlets, catalogues, and letters, to be transmitted through the United States mails, and by words orally spoken, that the corporation owned patents to a certain change-computing machine, a bank cashier, a lightning change maker, a currency paying machine, and a new style adding machine; that the corporation was engaged in the business of manufacturing and selling such machines; that on account of its ownership of the patents and the manufacture of the machines, the shares of the capital stock of the corporation were of great value, and that large dividends would be paid thereon within six months from the date of the purchase of the stock; that the cor-

poration had a large number of bona fide orders for the purchase of machines, on account of which it would make a large profit; that the financial condition of the corporation was excellent, its assets largely exceeding its liabilities; that a certain amount of the stock offered for sale by the defendants belonged to the company, and that the money derived therefrom would belong to the corporation and be used by it to increase its assets, and particularly for increasing its manufacturing capacity; that by reason of the financial condition of the company, it was justified in increasing from time to time the selling price of its stock. It is further charged that it was a part of the conspiracy that the scheme to defraud should be carried out by the defendants, from time to time during its existence, fraudulently and designedly publishing and causing to be published false and untrue statements of the assets and liabilities of the company, and of its financial condition, in which it would be made to falsely appear that the assets were greatly in excess of their value and the liabilities less than the true amount thereof. It is further charged to have been a part of the conspiracy and scheme that the defendants should so manage and control the business of the corporation that more than 25 per cent of the money received from the sale of stock would be appropriated by them to their own use and benefit, and that, for the purpose of inducing persons to purchase stock, they would from time to time wrongfully and fraudulently increase the selling price thereof. It is then stated

that these proposed representations, statements, pretenses, and promises, except the ownership of the patent for the bank cashier, were untrue, and known to be such to the defendants and each of them, and were to be made for the purpose of cheating and defrauding the investors out of their money and property, and that the defendants well knew such investors would lose all the money invested by them. It is further charged that it was the understanding and agreement that the conspiracy was to, and did in fact, continue from September 1, 1910, to January 1, 1915, and that the defendants, and each of them, were parties thereto during that time.

“It is also alleged that, in pursuance of the conspiracy charged, and to effect the object thereof, the defendants Bonnewell, Menefee and LeMonn deposited and caused to be deposited in the United States mails, and for transmission thereby, certain letters and telegrams set out in the indictment, and which have been referred to throughout the trial as the overt acts.

The defendants have each entered a plea of not guilty. This plea is a denial of every material allegation in the indictment, and imposes upon the Government the burden of proving each and all of these to your satisfaction, beyond a reasonable doubt, before you will be justified in returning a verdict in its favor.

“Now, the material allegations in brief are, first, that there was a conspiracy, agreement, or under-

standing upon the part of the defendants; second, that such conspiracy was to devise the particular scheme to defraud set out in the indictment; and, third, that it was a part of the understanding and agreement that the postoffice establishment of the United States was to be used for the purpose of executing the scheme. It is therefore incumbent on the Government to prove, not only that the defendants conspired together to devise the particular scheme set out in the indictment, but that it was a part of such agreement or conspiracy that the scheme should be executed by the use of the postoffice establishment of the United States; and if as to any one or more of the defendants the Government has failed to prove any one or more of the elements necessary to constitute the crime charged, it is your duty to find such defendant or defendants not guilty.

“The jurisdiction of this court over this case is because of the charge that it was a part of the alleged conspiracy or agreement that the scheme, if there was a fraudulent scheme, should be executed by the use of the United States postoffice establishment. This court does not have jurisdiction to punish persons for entering into fraudulent schemes or devices, nor for committing frauds, unless it is a part of their agreement that the United States mails should be used in carrying them into effect. Therefore, even though you should find that the defendants did agree together to devise a scheme to defraud, it would not be sufficient to justify their conviction unless it also appears that

it was a part of such conspiracy that the United States mails should be used for executing it. And even if injury resulted from the acts of one or more of the defendants, brought about and executed in whole or in part by the use of the mails, it would not justify a conviction of such defendant or defendants unless it further appeared that the original agreement or understanding contemplated the use of the mails in furtherance of their common purpose.

“The indictment charges that the alleged fraudulent scheme was to be carried out and executed by certain specific false representations. It is not incumbent upon the Government to prove that all of the means set out in the indictment were in fact agreed upon to carry out the alleged conspiracy, or that any of them were actually used or put into operation. It is sufficient if it be shown to your satisfaction, beyond a reasonable doubt, that the conspiracy was entered into for the purposes indicated, and that one or more of the means described in the indictment were to be used to execute it, and that, during the continuance of the conspiracy, the alleged overt acts, or some one or more of them, stated in the indictment were done by one or more of the conspirators to effect the object thereof.

“It is charged in the indictment that one of the means to be used by the alleged conspirators to carry out their fraudulent scheme was to represent that the United States Cashier Company owned

patents to the certain coin machines heretofore mentioned, when in truth and in fact they did not own such patents. If it was a part of the conspiracy, if a conspiracy existed, that the defendants should represent that the corporation owned patents to the machines which they purposed to manufacture, and such representations were false and known to be so to the parties making them, and were made for the purpose of inducing and persuading persons to purchase stock, it would constitute a scheme to defraud within the statute. And you in this connection should consider any wilful misrepresentation that the defendants may have made in relation to the patent situation. But if at the time these representations were made the company did in fact have patents, issued by the Patent Office of the United States, for any of the machines, the representations, so far as that particular machine was concerned, would not be false. Bad faith or fraudulent misrepresentations cannot be imputed to the defendants in respect of patents in fact issued, and owned by them, or in respect to claims that are in fact allowed, because of some alleged infringement. There is a presumption of law that, where a patent is issued by the United States Patent Office, it does not infringe any known patent, and a patentee in accepting such patent is not thereby guilty of bad faith. You are not called upon to decide in this case whether the patents issued or the claims allowed were in fact an infringement of some invention or patent, or were dominated or af-

fectured injuriously by the Osborne and Lindelof or the Cook patents, or any previous invention, and the evidence of the witness Sewall to that effect should be disregarded. The question on this branch of the case is, were the representations made by the defendants, if any, concerning the patent situation false and made in bad faith, with a fraudulent intent to deceive purchasers of stock in or of the company, or were they made in good faith, with an honest belief in their verity? A representation to be fraudulent must not only be false, but must have been made in bad faith and with a fraudulent intent to deceive, to the injury of the person to whom the representations were made. Honest mistakes or errors of judgment in regard to these matters, or any matters involved in this case, or statements inadvertently made, without a fraudulent purpose, even if material, are not fraudulent. As I understand the testimony, it is admitted that, at the time the advertisements were inserted in the newspapers, the company did not own patents to all the machines therein enumerated, and whether those representations that they did own patents to machines to which they had no patents, if such representations were in fact made, were fraudulent and made for the purpose of deceiving purchasers of stock is a question for you to determine from the testimony in this case.

“It is also charged in the indictment that other proposed means of carrying out the fraudulent scheme were to falsely represent that the United

States Cashier Company was engaged in the business of manufacturing and selling these coin machines; that the company had a large number of bona fide orders for the purchase of machines, and that the financial condition of the company was excellent, and such as to justify increasing from time to time the selling price of the stock, and that certain stock to be offered for sale belonged to the company, and the money derived therefrom would belong to the company, and be used by it, and become a part of its assets, and be used in its manufacturing business. If these representations, or any of them, were agreed to be made, and were false and known to be such to the defendants, and were to be made for the purpose of deceiving the public, they would constitute schemes to defraud within the meaning of this statute.

“Respecting the charge of the false representations regarding the enterprise of manufacturing and selling the machines mentioned in the indictment and the evidence, if the defendants honestly and in good faith intended to establish a business to manufacture and sell the machines, in the belief as the situation then appeared to them, that it would be profitable to the company and its stockholders, you cannot find them guilty of the charge that the company was not intending to engage in either the business of manufacturing or selling such machines.

“With reference to the evidence that the price of the stock was raised at intervals, if you find that

it was done in the honest belief at the time that the progress of the affairs of the company justified such raise, and that the stock was of the value of the increased price, though such belief may not have been justified by the then condition of the enterprise as indicated by subsequent events, you cannot find the defendants guilty because they proved to be mistaken about that.

“The statute which it is charged the defendants conspired to violate includes everything designed to defraud by false and fraudulent representations as to the past or present, or suggestions and promises as to the future, and the significant fact in this case is the intent and purpose of the defendants in making the representations charged in the indictment, if they were in fact made. The question for your determination is not whether the business which the defendants were engaged in promoting was a legitimate business, or was practicable or not. If the corporation, and the defendants as officers and agents thereof, entered in good faith upon the business, believing that the representations made by them, or to be made, were true, and that they could and would earn enough to justify the promised returns on the investment, they should not be convicted, no matter how visionary you may consider their plans. Their good or bad faith in these matters is to be determined, and their several acts and declarations construed and interpreted, by conditions as they existed at the time the statements and declarations were made, and as they

appeared to the defendants at that time, and not by the final result of the enterprise, or from present conditions.

“To constitute a scheme to defraud, to be carried out by the use of the United States mails, it is not necessary that the scheme should be fraudulent on its face. Although apparently a legitimate business, it is within the statute if there was an intent not to conduct the business honestly, but to use it as a basis to defraud.

“The indictment, after setting out the conspiracy and the purpose thereof, and the means to be used to effect the same, alleges that, in furtherance thereof and for the purpose of effecting its object, certain letters were mailed by the defendants Bonnell, LeMonn and Menefee, and sent through the United States mails to the parties named in the indictment, and these constitute what have been referred to throughout the trial as the overt acts or the acts done by one or more of the conspirators to effect the object thereof. This is an essential allegation, and must be proven by the Government. A conspiracy alone does not constitute a crime, but one or more of the conspirators must, after its formation, do some act to effect the object thereof. It is not necessary for the Government to prove each of these acts. If you are satisfied, beyond a reasonable doubt, that one or more of the letters set out in the indictment were sent by one of the conspirators, if there was a conspiracy, after its forma-

tion and during its existence, to effect the object thereof, that is all the law requires. And in determining whether the letters set out were sent by one of the conspirators to effect the object of the conspiracy, if one was formed, you should consider the character of the letters, the purpose to be accomplished thereby, and all the circumstances bearing upon that question, and from that determine what the object and purpose was in sending the letter or letters through the mails.

“The indictment also charges that it was the purpose or intent of the defendants to defraud the persons named in the indictment, and the public generally, out of their money. The law presumes that every person intends the natural and probable consequence of his own act, and if you believe from the evidence, and beyond a reasonable doubt, that the defendants, or any two of them, conspired to do the things named in the indictment, substantially in the manner and form as therein set out, and that it was the natural and probable consequence of their acts that purchasers of stock of the Cashier Company would be defrauded, then you would be justified in finding that it was the intent of such defendants so entering into the conspiracy, if there was a conspiracy, to defraud the persons named.

“In order for one person to defraud another, it is not necessary that he should bear any malice or illwill toward such person. If the defendants in this case agreed together that they were to sell the

shares of stock in this corporation upon and on account of false and fraudulent representations, which they would make knowing these representations would be false and untrue, and knowing that they would be made for the purpose of deceiving the investors and the public as to the true condition and value of the shares of stock, then the law would imply that they intended to defraud all of the persons who should buy shares of stock from them, or from the Cashier Company, relying upon such representations.

“It has been truly said in argument that one of the cardinal points in this case is the intent of the defendants. But what intent? Was it their intent that they could make the business of the United States Cashier Company a success? Was it their belief that they could make the enterprise of the United States Cashier Company successful? The answer to these questions would necessarily be No. If they agreed to make false and fraudulent pretenses, representations or promises; if they agreed to make false and fraudulent representations and assurances, for the purpose of deceiving the investors and the public in respect to the true condition of affairs of the corporation, or the value of its stock, then the ultimate intent to make the business of the corporation a success, or the ultimate belief of the defendants that they could finally make it a success, would by no means furnish any condonation or legal excuse for the false and fraudulent representations, which they would under the

circumstances agree to make in order to induce the investors and the public to pay over their money.

“In considering this question, the question of and concerning the intent to defraud, you must direct your attention to the intent presented by the particular transaction set out in the indictment. If these defendants agreed that they would put forth the false representations or promises alleged, for the purpose of deceiving and misleading investors and the public into paying over their money, then it matters not how confident they may have been that they would be able to make the business or the corporation a success, or how confident they may have been that they would be able to return that money without loss, or with profit, because the representations which they would have agreed to make would be made for the purpose of getting the money in a wrongful manner, and they could not, under such circumstances, make them rightful by pointing to some ultimate good intent.

“The parallel between such a case as I have presented and the crime of embezzlement is very close. It is a well known fact that nearly every man who embezzles money expects that he will be able to pay it back without loss; but his taking is wrongful, and his intent to pay it back without loss cannot cancel the wrong. And so in this case, if the defendants, by means of the false and fraudulent representations set out in the indictment, agreed to mislead investors and the public generally

into paying over to them or to the Cashier Company their money and their property, then their belief that they could ultimately return that money without loss and with profit would not condone the wrong in getting the money by deception.

“The law presumes that every man intends the logical and natural consequences of his own wrongful act. Applying this rule to the case at bar, if you believe from the evidence, and beyond a reasonable doubt, that these defendants agreed among themselves that they would sell to the public and to these investors the shares of stock of the United States Cashier Company, under the false and fraudulent representations set out in the indictment, or some of them, then you would be justified in finding that the defendants agreed to defraud the investors and the public, notwithstanding the fact that you also might believe that the defendants really believed that the value of the stock would be ultimately such as to return to the investors a profit instead of a loss.

“It is not necessary in this case, in order to convict one or more of the defendants, that you should be satisfied that each of the defendants knew or understood all of the fraudulent representations, promises, or pretenses that were to be made, if any were to be made.’ If one of these defendants, at any time prior to the period of three years from the date of filing the indictment, and prior to the time when any overt act set out in the indictment was com-

mitted, agreed with another of said defendants that they would act jointly in carrying out the alleged fraudulent scheme set out in the indictment, and in selling the stock of the corporation representing that the money to be received from such sale was to go into the treasury of the company to be used by it in building factories, knowing that the shares of stock which were to be offered for sale were in truth and in fact the privately owned stock of another of the defendants, and that none of the money would go into the treasury of the company, and you further believe from the evidence that some of the false and fraudulent pretenses and promises set out in the indictment were to be used by the defendants for the purpose of inducing the investors to purchase such shares of stock, then you would be justified in finding that such persons so agreeing to sell the stock in said manner and under such false representations were parties to the conspiracy.

“If you believe from the evidence that the original purpose of the defendants was legitimate, and you further believe from the evidence that they believed in the future of the United States Cashier Company and believed that it would ultimately pay dividends to the investors, and you believe from the evidence and beyond a reasonable doubt that they deliberately agreed together to take advantage of the public interest in a meritorious invention in order to sell to the public shares of stock by the false and fraudulent representations set out in the indictment, if they were false, then you would be

justified in finding that the defendants intended to defraud the persons to whom they should sell such stock.

“In determining whether or not the defendants intended to defraud the investors of the money by selling to them the shares of stock of the corporation, you have a right to take into consideration the question of the commissions which the evidence shows, or tends to show, were received by the defendants, or any of them, from the proceeds of the sale of the stock.

“Now, the intent to form a scheme or artifice to defraud is an act of the mind which necessarily involves an intention to defraud. The purpose to devise such a scheme and the evidence of such intent may be shown by the acts and declarations of the parties and by attending circumstances, as well as by direct evidence. Whether such an intent has been proved in this case is a question of fact for your determination. Experience shows that positive proof of fraudulent acts is not generally to be expected, and for that reason, among others, the law permits a resort to circumstances as a means of ascertaining the truth, and in such case great latitude is allowed by the law to the acceptance of indirect or circumstantial evidence, the aid of which is constantly required, not merely for the purpose of remedying the want of direct evidence, but also to supply protection against imposition. Whenever the necessity arises for a resort to circumstantial

corporation to open and fair dealing was to be invaded, and that such fraud was to be accomplished by any of the means set out in the indictment, and that the letters sent by one or more of the conspirators and referred to in the indictment were written and mailed to effect the object of the conspiracy and in furtherance thereof. The formation of the corporation and the sale of stock therein is not itself criminal or wrongful, provided no deception or fraud is used to induce persons to make such purchases. The defendants, therefore, are not to be found guilty merely for selling or offering for sale stock in the corporation, although it may have proven an unprofitable investment to the purchaser, nor for mere mistakes or errors in judgment. And there is no presumption of fraud from the fact that glittering and glowing promises may have been made and not carried out, unless it shall appear that the persons who made such promises knew at the time of making same that they could and would not be carried out.

“The indictment charges that the conspiracy was formed in September, 1910. The date is not material. It is sufficient if it was formed sometime prior to the overt acts charged in the indictment, and continued and was in existence at the time of such acts.

“Now, if you are not satisfied from the evidence, beyond a reasonable doubt, of the existence of the conspiracy as charged in the indictment, or if you

have a reasonable doubt in that matter, you should return a verdict of not guilty as to all the defendants. If, however, on the other hand, you do believe beyond a reasonable doubt that the conspiracy was formed in manner and form as stated in the indictment, it will be necessary for you to determine who were the parties to such conspiracy. If there was a conspiracy as claimed by the Government, it would seem from the evidence that Menfee and LeMonn must be parties thereto. Menfee was the president and general manager of the company, and LeMonn was the sales manager, and together they had charge of the stock-selling campaign. Whether these two parties conspired and confederated together to defraud purchasers of stock in the manner and form as set out in the indictment is a question for you to determine from the testimony. And whether any of the other defendants were parties to the conspiracy, if you find one existed, is to be determined from the evidence offered against them. Before they, or any of them, can be convicted, it must appear that they were parties to the conspiracy set out in the indictment, and they cannot be convicted on evidence that they devised or were parties to some other conspiracy not charged.

“Gernert, Bonnewell and Todd were sales agents of the company, engaged in selling the corporate stock in pursuance of an agreement with the officers of the corporation. Their connection with the alleged conspiracy cannot be established, as to any of them, by the acts and declarations or

statements of the other defendants, made without their knowledge. One cannot be made a member of a conspiracy except by his own acts or declarations, and the acts and declarations of another are not evidence against him.

“Numerous letters have been offered and read in evidence, written or purporting to have been written or dictated by the defendants Menefee and LeMonn, and addressed to divers and sundry persons. These letters, if they contain statements tending to establish a conspiracy, are competent evidence to be considered by you as against the writer; but no statements made therein are to be taken as evidence against the other defendants not connected with such letters. The connection of the other defendants with the conspiracy must be determined from their own acts and conduct, and not from the declarations of the other alleged co-conspirators. Before either of the sales agents can be convicted, you must be satisfied, beyond a reasonable doubt, that the conspiracy existed as charged in the indictment, that they knew of its existence and purpose, and, with full knowledge thereof, joined therein with the purpose and intent of assisting in its accomplishment. Mere suspicion or conjecture that they were connected with an unlawful combination, if there was such a one, is not enough. All the facts necessary to make them conscious participants therein must be shown before you can find them guilty. If they acted in good faith, relying upon the representations and statements of their superior

officers, believing them to be true, they should not be convicted because they repeated such statements to intending purchasers.

“If, however, you find from the evidence that a conspiracy was entered into and existed as alleged in the indictment, and that, after its formation and while it was in existence, the defendants Gernert, Bonnewell and Todd, or either of them, became willing parties thereto and assisted in carrying it out, they would continue to be parties thereto and bound by every act in furtherance thereof until such time as they should, by some act of their own, withdraw therefrom. To withdraw from a conspiracy after entering into it requires an affirmative action of withdrawing. If one willingly assists in starting evil forces into operation, he must affirmatively withdraw his support from them, or he must suffer the consequences of incurring guilt by those connected therewith; and until he does so withdraw there is conscious offending. These sales agents had a right to rely and act upon any statements made to them by their principal or employer, without inquiry as to whether they were true or false, if they honestly believed them to be true, unless, of course, it is apparent upon their face that they could not be true, and if an employer informs an employe that certain facts exist and are true, and that certain representations or promises may be made or carried out, the agent has a right to repeat these statements to such person or persons whom he had a right to interest in his project, with-

out being criminally responsible for them, even though it afterwards transpires that they are not true. And it is not sufficient in this case for the Government to show certain acts of these sales agents, or that these agents performed certain acts, and that one or more of the other defendants performed other and different acts, even though they had a similar purpose in view, unless it further appears that there was a common concert of action between them and an agreement so to act. These sales agents were not officers of the Cashier Company, and stood in no fiduciary relation toward its stockholders, or such persons as might become such stockholders. They were mere salesmen, and therefore had a right to make such a contract or agreement with the officers of the company concerning their own compensation as they were able to make, provided it was done in good faith, and with no intention to enter into any conspiracy that existed, if there was one.

“It is claimed as against both Gernert and Todd that they sold private stock, representing it to belong to the company and that the money derived therefrom would go into the treasury of the company, when in truth and in fact they appropriated the money to their own use, and the stock belonged to parties other than the corporation. Now, neither of these acts would constitute a crime within this indictment, unless you believe from the testimony, beyond a reasonable doubt, that these gentlemen knew of the alleged conspiracy, and that it was a

part of such conspiracy that private stock should be sold as the stock of the corporation and upon a representation that the money derived therefrom should go into the treasury of the company.

“Again it is claimed, on behalf of Todd, that he severed his connection with this company some time early in 1912, and abandoned his previous relations with it, and therefore withdrew from the conspiracy, if there was a conspiracy at that time. Now, if that is true, or if you have a reasonable doubt upon that subject, then the fact that he subsequently, some year or two later, sold on his own account stock which he had purchased from one of the officers of the company, representing that it was company stock or that the money derived therefrom would go into the coffers of the company, would not justify a verdict of guilty as against him under the indictment now under consideration. And this same statement would apply to the defendant Bonnewell. Before either of these, or any of these defendants can be convicted, it must appear that they were parties to the conspiracy charged in the indictment, and that their acts were done in pursuance thereof and in furtherance of such conspiracy.

“Now, gentlemen, this is a criminal case. The defendants have each entered a plea of not guilty, and, as I have said to you, that imposes upon the Government the duty of proving every material allegation necessary to constitute the crime, to your

satisfaction beyond a reasonable doubt, before you can convict.

“When I have said heretofore in these instructions that a certain fact must be established by the Government, or a certain fact must be proven before you are justified in finding a verdict of guilty, I have meant always that it must be proven to your satisfaction beyond a reasonable doubt.

“The defendants, and each of them, are presumed to be innocent of this charge. This presumption is not a mere fiction which can be disregarded at pleasure. It is a substantial part of the criminal law of the country, and continues and abides with the defendants throughout the trial until overcome by the testimony. They are not required by law to prove their innocence. The burden is upon the Government to prove their guilt, and that beyond a reasonable doubt.

“By a reasonable doubt I do not mean a mere possible doubt, a mere captious doubt, but such a doubt as would cause a reasonably prudent man to hesitate to act in his own most grave and important affairs. It is not such a doubt as a juror might conjure up in his own mind, without any substantial basis for it, but it is a doubt founded either on the evidence or want of evidence, and is that state of the case which leaves your minds in such a condition that, after a careful consideration of all the testimony, you cannot say you feel an abiding conviction, to a moral certainty, of the guilt of the defendants.

If you do so hesitate, you should give the defendants the benefit of it, and an acquittal. If, on the other hand, however, after an entire comparison and consideration of all the evidence, you feel an abiding conviction, to a moral certainty, of the guilt of the defendants, or any of them, under the law as I have given it to you, you should so declare in your verdict.

“You are the exclusive judges, gentlemen, of the credibility of the witnesses and the weight to be given to their testimony. You are also the exclusive judges of all questions of fact, and if at any time during the trial the court has intimated its views concerning any disputed question of fact, or the testimony of any witness, you are to disregard it unless it conforms to your own understanding.

“Every witness is presumed to speak the truth. This presumption may be overcome by the manner in which a witness testified by his appearance on the witness-stand, or by contradictory testimony.

“The defendant Menefee has availed himself of the right given him, and testified in his own behalf. His testimony is before you, and you are to determine how far it is credible, and to apply to it the same rule and test that you apply to the testimony of any other witness who has been called in this case, keeping in mind, however, the deep interest which he has in the result of the trial.

“The other defendants have not testified, and no inference or presumption is to be drawn against them on that account.

“Now, there has been considerable said during this trial about the sale or transfer of the property or part of the property, of the United States Cashier Company to an Indiana corporation. The defendants are not on trial for that transaction, and whatever you may think about it, you would not be justified in convicting them in this case on its account. The proof in reference to it was a circumstance in the case, developed during the trial, and it is proper for you to consider for whatever you may think it is entitled to as explaining or supporting the charges made in the indictment.

“During the trial a witness by the name of Baker was called and testified. During his examination certain letters were produced, written to him by one of the officers of the corporation, not involved in this controversy however, and I desire to caution you again about giving any weight as evidence to any statements contained in those letters. They were used solely and entirely for the purpose of impeaching, or tending to impeach, Mr. Baker by showing that he had made statements out of court inconsistent with his testimony given on the trial. For that purpose they were used, and for no other, and any statements or declarations that Mr. Baker may have made in these letters concerning any of the defendants on trial, or any of the issues involved in this

case, or any matters you are to consider, should be entirely disregarded by you, because the guilt or innocence of one individual cannot and ought not to be determined by the declarations of some third party.

“The indictment in this case charges but one conspiracy, although there are numerous overt acts alleged, and therefore the requirements of the law will be satisfied by a general verdict, without passing upon each of the particular overt acts. I think there is no controversy but what they were all proven except two or three; but in any event, proof of one or more of the overt acts, done by a conspirator, would be sufficient to support that averment in the indictment.

“Your verdict, gentlemen, must be unanimous, and after you retire to the jury room you will select one of your number as foreman, who will sign any verdict that you may return.

“During the progress of this trial the court overruled or denied a motion for a directed verdict as to three of these defendants—Gernert, Bonnewell and Todd. You are not to infer from that, gentlemen, that in the opinion of the court there was evidence sufficient to convict these three gentlemen. It is the duty of the court to determine questions of law and of the jury to pass upon all questions of fact, and therefore, when the court denied the motion for a directed verdict, it simply held that, in its opin-

ion, there was some evidence, sufficient to carry this case to the jury, and to call upon the jury to determine whether it was enough to show that these defendants were guilty of the crime charged against them, and you are to draw no inference against the defendants because of the action of the court in overruling such motion.

“Now, gentlemen, it is needless for me to remind you that this is a case of importance, both to the Government and to the defendants. Take it—consider all the facts and circumstances in evidence before you—consider it carefully and dispassionately, with an eye single to reaching a just conclusion, and return a verdict according to the law and the facts as you understand them.

“There are three forms of verdict that you can return in this case: One is a verdict of not guilty as to all the defendants. Another is a verdict of guilty as to all the defendants except the defendant Bilyeu, and as to him your verdict shall be not guilty. And the third is a verdict of guilty as against two or more of the defendants, and not guilty as to the others. Forms have been prepared which you may adopt, or use these or similar forms, filling in the necessary blanks.

“Mr. Pipes: There are a few verbal matters I would like to call your Honor’s attention to. In the instructions concerning a conspiracy, that it may be a conspiracy to do a criminal act, or an innocent

act by unlawful means. I take it that in this case it must be the first.

“Court: Yes, in this case it must be the conspiracy to commit the particular crime charged in this indictment.

“Mr. Pipes: Yes. Now, in one of the definitions of a conspiracy, your Honor, as I remember it and heard it, in naming a number of means or number of acts committed by several persons independently tending to the same end, that it constituted a conspiracy. I think that would be correct if it were modified to say that it is evidence.

“Court: I didn’t intend to say constituted, if I said it. I intended, of course, to say that it was evidence of the conspiracy.

“Mr. Pipes: That, of course, then will be corrected, as far as that is concerned?

“Court: Yes.

“Mr. Pipes: Now, as to another one: In commenting on the subject of overt acts, your Honor evidently, it is perfectly plain to me, was speaking of the overt acts, but the word “overt” was left out. I think they just ought to understand that no act in evidence in this case is an overt act except one of those described and set out in the indictment.

“Court Yes, I will make that clear to the jury, if I didn’t do that. Gentlemen, the indictment in this case charges that certain letters set out and de-

scribed in the indictment were sent by the parties named, through the United States mails, in furtherance or in execution of the alleged conspiracy; and these letters constitute the overt acts, and no other act could constitute an overt act except those stated in the indictment."

To the following instructions of the Court so given the defendant, O. E. Gernert, took exception, which exception was duly granted and allowed by the Court:

Again, one who, after a conspiracy is formed, with knowledge of its existence, joins therein and aids and participates in its execution, becomes as much a party thereto from that time on as if he had been an original conspirator. Furthermore, where two or more persons are proven to have combined and confederated together for some illegal purpose, any act done by one of the parties, in furtherance of the common design and with reference to the common object, is in law the act of all, and therefore proof of such act will be evidence against any of the others who are engaged in the same conspiracy.

The indictment charges that the alleged fraudulent scheme was to be carried out and executed by certain specific false representations. It is not incumbent upon the government to prove that all of the means set out in the indictment were in fact agreed upon to carry out the alleged conspiracy, or that any of them were actually used or put into operation. It is sufficient if it be shown to your satisfaction, beyond a reasonable doubt, that the conspiracy was entered into for the purposes indicated,

and that one or more of the means described in the indictment were to be used to execute it, and that, during the continuance of the conspiracy, the alleged overt acts, or some one or more of them, stated in the indictment were done by one or more of the conspirators to effect the object thereof.

In order for one person to defraud another, it is not necessary that he should bear any malice or ill-will toward such person. If the defendants in this case agreed together that they were to sell the shares of stock in this corporation upon and on account of false and fraudulent representations, which they would make knowing these representations would be false and untrue, and knowing that they would be made for the purpose of deceiving the investors and the public as to the true condition and value of the shares of stock, then the law would imply that they intended to defraud all of the persons who should buy shares of stock from them, or from the Cashier Company, relying upon such representations.

It has been truly said in argument that one of the cardinal points in this case is the intent of the defendants. But what intent? Was it their intent that they could make the business of the United States Cashier Company? Was it their belief that they could make the enterprise of the United States Cashier Company successful? The answer to these questions would necessarily be No. If they agreed to make false and fraudulent pretenses, representations or promises; if they agreed to make false and fraudulent representations and

assurances, for the purpose of deceiving the investors and the public in respect to the true condition of affairs of the corporation, or the value of its stock, then the ultimate intent to make the business of the corporation a success, or the ultimate belief of the defendants that they could finally make it a success, would by no means furnish any condonation or legal excuse for the false and fraudulent representations, which they would under the circumstances agree to make in order to induce the investors and the public to pay over their money.

In considering this question, the question of and concerning the intent to defraud, you must direct your attention to the intent presented by the particular transaction set out in the indictment. If these defendants agreed that they would put forth the false representations or promises alleged, for the purpose of deceiving and misleading investors and the public into paying over their money, then it matters not how confident they may have been that they would be able to make the business of the corporation a success, or how confident they may have been that they would be able to return that money without loss, or with profit, because the representation which they would have agreed to make would be for the purpose of getting the money in a wrongful way and they could not, under such circumstances make them rightful by pointing to some ultimate good intent.

The parallel between such a case as I have presented and the crime of embezzlement is very close. It is a well known fact that nearly every man who embezzles money expects that he will be able to pay it back without

loss; but his taking is wrongful and his intent to pay it back without loss cannot cancel the wrong. So in this case if the defendants by means of the false and fraudulent representations set out in the indictment agreed to mislead investors and the public generally into paying over to them or to the Cashier Company their money and their property, then their belief that they could ultimately return that money without loss and with profit could not condone the wrong in getting the money by deception.

The law presumes that every man intends the logical and natural consequences of his own wrongful act. Applying this rule to the case at bar, if you believe from the evidence, and beyond a reasonable doubt, that these defendants agreed among themselves that they would sell to the public and to these investors the shares of stock of the United States Cashier Company, under the false and fraudulent representations set out in the indictment, or some of them, then you would be justified in finding that the defendants agreed to defraud the investors and the public, notwithstanding the fact that you also might believe that the defendants really believed that the value of the stock would be ultimately such as to return to the investors a profit instead of a loss.

It is not necessary in this case in order to convict one or more of the defendants that you should be satisfied that each of the defendants knew or understood all of the fraudulent representations, promises or pretenses that were to be made, if any were to be made. If one of the defendants at any time prior to the period of three years

from the date of filing the indictment and prior to the time when any overt act set out in the indictment was committed agreed with another of said defendants that they would act jointly in carrying out the alleged fraudulent scheme set out in the indictment, and in selling the stock of the corporation representing that the money to be received from such sale was to go into the treasury of the company to be used by it in building factories, knowing that the shares of stock, which were to be offered for sale, were in trust and in fact the privately owned stock of another of the defendants and that none of the money would go into the treasury of the Company, and you further believe from the evidence that some of the false and fraudulent pretenses and promises set out in the indictment were to be used by the defendants for the purpose of inducing the investors to purchase such shares of stock, then you would be justified in finding that such persons so agreeing to sell their stock in such manner and under such false representation, were parties to the conspiracy.

If you believe from the evidence that the original purpose of the defendants was legitimate, and you further believe from the evidence that they believed in the future of the United States Cashier Company and believed that it would ultimately pay dividends to the investors and you believe from the evidence and beyond a reasonable doubt that they deliberately agreed together to take advantage of the public interest between a meritorious invention in order to sell to the public shares of stock by the false and fraudulent representations set out in the

indictment, if they were false, then you would be justified in finding that the defendants intended to defraud the persons to whom they should sell such stock.

In determining whether or not the defendants intended to defraud the investors of the money by selling to them the shares of stock of the corporation, you have a right to take into consideration the question of the commissions which the evidence shows, or tends to show, were received by the defendants or any of them, from the proceeds of the sale of the stock.

Now, the intent to form a scheme or artifice to defraud is an act of the mind which necessarily involves an intention to defraud. The purpose to devise such a scheme and the evidence of such intent may be shown by the acts and declarations of the parties and by attending circumstances, as well as by direct evidence. Whether such an intent has been proved in this case is a question of fact for your determination. Experience shows that positive proof of fraudulent acts is not generally to be expected, and for that reason, among others, the law permits a resort to circumstances as a means of ascertaining the truth, and in such case great latitude is allowed by the law to the acceptance of direct or circumstantial evidence, the aid of which is constantly required not merely for the purpose of remedying the want of direct evidence, but also to supply protection against imposition. Whenever the necessity arises for a resort to circumstantial evidence, either from the nature of the inquiry or the failure of direct proof, great latitude is allowed in its admission, for the reason that the force and

effect of circumstantial facts usually and almost necessarily depend upon their connection with each other. Circumstances altogether inconclusive, if separately considered may, by their number and joint operation established or corroborated by minor circumstances be sufficient to constitute conclusive proof. And where fraud in the purchase or sale of property is in issue, evidence of frauds of like character committed by the same parties at or near the same time, is admissible, on the ground that where transactions of a similar character executed by the same parties are closely connected in point of time, the inference is reasonable that they proceed from the same motive.

The indictment charges that the conspiracy was formed in September, 1910. The date is not material. It is sufficient if it was formed some time prior to the overt acts charged in the indictment and continued and in existence at the time of such acts.

Whereupon the jury duly retired to consider their verdict and thereafter returned a verdict into court finding the defendant, O. E. Gernert, guilty as charged in the indictment, which said verdict was duly filed.

Thereafter the defendant, O. E. Gernert, moved the court as follows:

Comes now O. E. Gernert, by his attorney, Robert F. Maguire, within the time allowed by court, and moves the court for a new trial on behalf of the said defendant, O. E. Gernert, upon the following grounds and for the following reasons:

I.

That the indictment does not state facts sufficient to constitute a crime.

II.

That the indictment charges more than one crime.

III.

That there is no evidence tending to show any confederation, agreement or conspiracy on the part of the defendant, O. E. Gernert, with the defendants named in the indictment or any of them.

IV.

That the verdict of the jury was against the law as laid down by the court.

V.

That the court erred in giving certain instructions to the jury which were duly excepted to by the defendant, O. E. Gernert.

VI.

The court erred in failing to give certain instructions to the jury as requested by the defendant, O. E. Gernert.

VII.

The court erred in modifying certain instructions requested by the defendant, which modification was duly excepted to.

VIII.

The court erred in various rulings upon the law and evidence, which were duly excepted to by the defendant, O. E. Gernert, at the time of the trial.

IX.

That the court erred in refusing to instruct the jury to find the defendant, O. E. Gernert, not guilty.

(Signed) Robert F. Maguire,
Attorney for defendant,
O. E. Gernert.

Thereafter the defendant, O. E. Gernert, moved the court for an arrest of judgment as follows:

Comes now the defendant, O. E. Gernert, by his attorney, Robert F. Maguire, and moves the court for an order and arrest of judgment in said case on behalf of the said defendant, O. E. Gernert, upon the following grounds and for the following reasons:

I.

That it appears from the evidence in said case and the stipulation of counsel that the object of the conspiracy had been effected more than three years prior to the filing of the indictment.

II.

That the record in said case shows that as to the defendant, O. E. Gernert, the statute of limitations has run.

III.

That the indictment does not state facts sufficient to constitute a crime.

IV.

That the court erred in refusing to instruct the jury to find the defendant, O. E. Gernert, not guilty.

V.

That there was no evidence connecting the defendant, O. E. Gernert, with the conspiracy set out in the indictment.

VI.

That the evidence affirmatively shows that the defendant, O. E. Gernert, was not confederating, associating, connected or acting with the defendants for more than three years prior to filing the indictment.

VII.

That there is no evidence tending to show that the defendant, O. E. Gernert, had any fraudulent intent.

VIII.

That there is no evidence tending to show that the defendant, O. E. Gernert, confederated, conspired or concurred with the defendants or any of them in the offense charged in the indictment.

IX.

The court erred in giving certain instructions to the jury, all of which were duly excepted to by the defendant, O. E. Gernert.

X.

The court erred in failing to give certain instructions requested by the defendant, which were excepted to by the defendant, O. E. Gernert, at the proper time and place.

XI.

That the court erred in modifying certain instructions requested by the defendant O. E. Gernert, which modifications were excepted to by the defendant, O. E. Gernert, at the proper time and place.

XII.

That the verdict of the jury was contrary to the instructions of the court and contrary to law.

XIII.

That there was no evidence tending to connect the defendant, O. E. Gernert, with the crime alleged in the indictment.

XIV.

That the court erred in various rulings in law and evidence, which were duly excepted to by the defendant, O. E. Gernert, at the proper time and place.

XV.

That the District Attorney was guilty of misconduct in the cross-examination of the witness, Edward Baker, which conduct was excepted to by the defendant, O. E. Gernert, at the proper time and place.

XVI.

That the court erred in not instructing the jury to disregard all testimony of the witness, Oviatt, relative to his alleged claim of priority of invention of the selector bar and which was known throughout the trial as the Bilyeu Invention.

Thereafter the court heard the arguments of counsel upon said motions and overruled the same, to which action of the court the defendant, O. E. Gernert, was duly allowed an exception.

Thereafter the court entered a judgment of conviction and sentenced the defendant, O. E. Gernert, to confinement in the Multnomah County jail, Portland, Oregon, for a period of four months.

Thereafter and within the time allowed by court the defendant, O. E. Gernert, presented this, his Bill of Exceptions, which is hereby duly allowed.

R. S. BEAN,
Judge.

Filed March 29, 1916.

G. H. Marsh, Clerk.

And afterwards, to wit, on the 29th day of March, 1916, there was duly filed in said Court and cause a Petition for Writ of Error in words and figures as follows, to wit:

PETITION FOR WRIT OF ERROR.

Now comes O. E. Gernert, defendant in the above-entitled cause, and brings this his Petition for a Writ of Error to the District Court of the United States for the District of Oregon, and respectfully shows:

That on the 25th day of October, 1915, there was rendered and entered in the above-entitled court a judgment and sentence against him, the above-named defendant, whereby said defendant was adjudged and sentenced to be imprisoned for the term of four (4) months in the Multnomah County Jail, Portland, Oregon, in which judgment and sentence against said defendant, and in the proceedings had prior thereunto in this cause, certain errors were committed to the prejudice of said defendant, all of which will more in detail appear from the Assignment of Errors which is filed with this Petition.

WHEREFORE, said above-named defendant prays that a Writ of Error may issue in his behalf out of the United States Circuit Court of Appeals for the Ninth Circuit for the correction of the errors so complained of, and that a transcript of the record, proceedings and papers in this cause, duly authenticated, may be sent to the said Circuit Court of Appeals, and that all further proceedings in the above-entitled District

Court be suspended, stayed, and superseded, and that sentence and execution herein be stayed until the final disposition of said Writ of Errors in said United States Circuit Court of Appeals for the Ninth Circuit.

Dated this 28th day of March, 1916.

LITTLEFIELD & MAGUIRE,

Attorneys for Defendant,

O. E. Gernert.

Filed March 29, 1916.

G. H. Marsh, Clerk.

And afterwards, to wit, on the 29th day of March, 1916, there was duly filed in said Court and cause an Assignment of Errors in words and figures as follows, to wit:

ASSIGNMENT OF ERRORS.

O. E. Gernert, defendant in the above-entitled action, and plaintiff in error herein, having petitioned for an order from said Court permitting him to procure a Writ of Error from this Court directed from the United States Circuit Court of Appeals for the Ninth Circuit from the judgment and sentence made and entered in said cause, against said plaintiff in error, and petitioner herein, now makes and files with his said petition the following assignment of errors herein upon which he will rely for a reversal of said judgment and sentence upon the said writ, and which said errors, and each and every of them, are to the great detriment, injury and prejudice of the said defendants and in violation of the rights conferred upon him by law; and he says that in the record

and proceedings in the above-entitled cause upon the hearing and determination thereof in the District Court of the United States for the District of Oregon there are manifest errors in this, to-wit:

I.

That the Court erred in admitting in evidence against the defendant, O. E. Gernert, Government's Exhibit 293, being a carbon copy of a letter dated Portland, Oregon, February 10, 1912, addressed to O. E. Gernert at Portland, Oregon, as follows:

"Portland, Oregon, February 10th, 1912.

Mr. O. E. Gernert,

Portland, Oregon.

Dear Sir:—

In reference to our understanding in regard to your selling stock in California territory, will say that we will make you the following proposition: You are to work in the territory from San Francisco south toward Los Angeles, keeping at a distance from said latter place, so as not to interfere with the territory or work of our Agent there, and you are to have working under you such men as you may mutually arrange for, and after the first advancement to any of the men working under you, no further advancement shall be made to any of them, except through you.

All men working under you shall receive a commission of fifteen (15%) per cent, providing the business done by them shall not equal or exceed the

sum of One Thousand Five Hundred (\$1,500.00) Dollars per month; twenty (20%) per cent if the business done by them shall exceed One Thousand Five Hundred (\$1,500.00) per month and shall not exceed Three Thousand (\$3,000.00) Dollars; and twenty-five (25%) per cent if the business done by them in any one month shall exceed the sum of Three Thousand (\$3,000.00) Dollars; these commissions to be allowed and rated only on cash business done by each of your men respectively.

On all the business done by your men where settlement is made in paper, and either notes or contracts taken only a fifteen (15%) per cent commission shall be allowed, and no paper shall be taken to run longer than ninety (90) days provided where settlement is made for purchases of stock by note, if you or your agent shall succeed in discounting said note without recourse, so that the proceeds shall be received by us within ten (10) days after the close of the month in which the sale of the stock is made for which said note is taken in settlement, same shall be credited back as cash business for the month in which the subscription was taken. The commissions on settlements made by note or contract or in any manner other than cash, shall only become due and payable when the money is received by us for the sale or collection of said note or contract.

The above terms shall apply to any business done by you personally without the aid of assistance of an agent.

It is understood and agreed that you shall be entitled to receive an over-head commission on all business done by you or your agents of five (5%) per cent, and your commission shall be due and payable as that of the Agents, or in other words, on cash received, or on notes negotiated without recourse or collected.

We will advance to you for your personal expenses the sum of Twenty-five (\$25.00) Dollars per week, and pay you in addition to the above commission, a salary of Fifty (\$50.00) Dollars per week, it being understood that the Twenty-five (\$25.00) Dollars per week expense money shall be returned to us or deducted from your commissions as earned.

No settlement shall be made by you or any of your Agents on cash business turned in to you or through you to us, except the minimum commission of fifteen (15%) per cent on cash received, which you may retain and pay to the agents as the cash is received by you, and the bonuses or extra commissions, if any shall accrue to any agent, shall only be settled ten (10) days after the close of the month, when the volume of business done by each person working under you, shall be finally ascertained.

It is understood that in all sales made by you or your organization, you shall have the right to turn your own personal stock for one-fourth ($\frac{1}{4}$) of all such sales; that the turning over by you of the stock to the amount of one-fourth ($\frac{1}{4}$) of all of the net

proceeds, less your commissions, agents' commissions, and other expenses incurred in the selling of the stock which you shall dispose of.

In consideration of allowing you to dispose of one-fourth ($\frac{1}{4}$) of the stock handled by you, from your personal stock, you are to bear one-fourth ($\frac{1}{4}$) of the expense of your own salary, sales commissions, and other expenses, it being understood that our agreement to pay to you the salary mentioned, and advance to you the money as above stated, is to be considered only as a loan to the extent of the advancement of the Twenty-five (\$25.00) Dollars per week, and one-fourth ($\frac{1}{4}$) of your salary.

With reference to all notes taken by you, it is understood that you shall, where you leave same with a local bank for collection, take a receipt from said bank, particularly describing the note, the returns and commissions to be allowed for the collection and so deposit the same that the proceeds will be at once accounted for and remitted to the undersigned by said bank.

Yours faithfully,

No. 3.

F.M.:MM

over the objection of the defendant **Gernert**.

II.

The Court erred in overruling an objection of the defendant Gernert to the following testimony of the witness Oviatt on his direct examination:

“That he had devised the principles of a coin paying and (in the summer of 1909) had gone to Mr. Glover, a public engineer with a view to having him develop it for the witness, but he was unable to do so, and that he presented it to Mr. Bilyeu; that Mr. Bilyeu took it under consideration, and after two days of deliberation said he would take it on, with the understanding that he would have forty per cent of the results, and that the witness was to have the other sixty per cent of the results; that the agreement was not in writing; that the witness was to turn over to Bilyeu his ideas, and Bilyeu was to proceed with the development and put it into working shape, and build a model. That the witness had disclosed to Mr. Bilyeu the basic principle, which was the connection of each individual key with a selector bar or rod, so that by a depression of that key the proper ejector or ejectors would be turned from a non-paying to a paying position. That Mr. Bilyeu said he would undertake the work, with the understanding that the results would be divided sixty per cent to the witness and forty per cent to Bilyeu, and that was agreeable to witness, and that they shook hands on it. That Mr. Bilyeu said to him, “I will take you out to my model maker,” which he did, in South Portland, to Mr. Overlin; that he had not seen Mr. Overlin before, and that Mr. Bilyeu introduced him to Mr. Overlin and said that the witness had been associated with Mr. Potter in the development of the machine, and had not been treated properly by Mr. Potter; that witness had de-

vised a machine of his own and arranged with Bilyeu to develop it, and wanted Overlin to undertake the manufacture of a model; that Mr. Overlin accepted, and they returned to town. That Mr. Bilyeu advertised for a draftsman, and put him to work in the Ainsworth Building; that the model was constructed and that a month or six weeks after that time Mr. Bilyeu said to the witness one day that he had been thinking the matter over for a week past, and had decided that the witness did not own anything in the device, and went on to say that he had applied for a patent in his own name, and the witness said there was nothing further to do except for witnesses to make a better machine, and that Mr. Bilyeu said he could not do it. That the witness went east the 2nd day of May, 1910, and went first to the Comptograph Company, with sketches, and then to the Wales people, and finally arranged for the building of the machine, and completed it in August, 1910, and that was the Payograph machine. That he applied for a patent on the machine in August, 1911; that the first model was made in August, 1910; that the second model was completed in 1912.

The witness was then shown photographs of the exterior of the machine, and identified them as photographs taken in August, 1910, and of a machine he had just completed and demonstrated to the executive board of the Wales Adding Machine Company.

II A.

That the Court erred in permitting the witness to testify relative to and demonstrating the latest Payograph machine to the jury over the objection of the defendant Gernert as follows:

Q. Will you take that machine and demonstrate it to the jury? (Witness proceeds to demonstrate) Tell the jury what the machine is and what it is designed to do, and what it will do.

A. This machine here is not my invention, this machine is a stock adding machine made by the Wales Company in Wilkesbarre, known as the Adding Machine Company. This coin paying device is my invention and is connected to this adding machine, so that when the key is depressed here and this handle of the adding machine operated the is ejected here into the hand or envelope; it is listed on the paper of the adding machine here, and is added on the wheels of the adding machine here. The connect and disconnect is at this point. There is a large operating lever. (Operating machine) This is simply a connecting link from the coin paying mechanism to the adding machine. By taking out that thumb screw you disconnect all of the pay mechanism so that you can list and add without paying money, or without ejecting money, but when that link is attached by that thumb screw, then the operation of the adding machine also operates the paying machine over here, so that when you put down a key here and pull your handle, that amount will be

ejected over here to the hand or envelope, recorded on the paper here and added on the wheels here. Whenever you wish to add and list without paying, as I have said before, take this thumb screw out and you at once have separated your adding and paying mechanism, or the machine can be lifted bodily from this and the adding machine taken off to other parts of the office and used independently of this.

Q. In other words, the machine is so constructed that you can use the adding machine with or without the coin paying mechanism?

A. Yes, sir.

Q. And they are detachable?

A. Detachable, yes.

Q. And so arranged that by the manipulation of this screw or device on the end of the machine the adding machine either will or will not work in conjunction with the coin paying mechanism?

A. That is right.

Q. In other words, to make it plain, if you are using the adding machine as such, by handling it in the manner you have described, you could mark the number of figures by depressing the proper keys indicating the proper amounts, and that would add into the adding machine, without working the coin paying mechanism at all.

A. Yes, sir.

Q. And then by replacing that screw, the adding machine would perform exactly the same work, and in addition to that the proper amount of change would be paid out of the coin paying mechanism?

A. That is right.

Q. Now, what is the feature of novelty about that arrangement and about that machine—what is the main feature of novelty?

A. The ability to separate the adding mechanism from the paying mechanism is one of the principal objects.

Q. Now, to what sort of adding machines can this coin paying mechanism be attached?

A. This coin paying mechanism has been attached to the Wales machine, to the Burroughs machine, and can be adapted to and attached to any regular type of adding machine.

Q. Do I understand you then that in the marketing of the machine you could simply sell the frame of the coin paying mechanism and they would connect it on to the regular adding machine, without the necessity of purchasing an adding machine?

A. This one here could be. This one would have to be taken into the shop and the key stems extended: that one there is a stock machine connected with the other machine.

Q. The machine you have been demonstrating now is the first model?

A. That is the first model.

Q. Have you the latest model of the payograph machine?

A. This is the latest model.

Q. Now, demonstrate to the jury the latest model.

A. This here is what is termed the Burroughs Visible Adding Machine; this here is the payograph with the extension or mezzanine keyboard, so that when you depress a key here you set the mechanism not only for the paying but also for the adding machine beneath, and pressing the corresponding key of the adding machine; then when you operate the handle here you not only list and add on the adding machine, but you pay that amount over here; this can operate independent on this, that is the adding machine independent of the coin paying, simply by changing this button on this side. With it in position it would pay, list and add; with the button turned that way, it would add, list, but would not pay. Then this machine, the adding machine, can be taken out bodily from beneath and used as an ordinary adding machine about the office the days they don't wish to pay off.

Q. Now, what is the feature of novelty in that machine, Mr. Oviatt?

A. The principal feature is the same as in that, ability to separate your adding mechanism from your paying mechanism.

Q. You claim to be the inventor of any part or portion of the adding machine?

A. No.

Q. What adding machine do you use in connecting your machine to it?

A. We are using right here the Burroughs.

Q. What is the reason, the main reason, for simply connecting your machine to it, instead of making an adding machine of your own?

A. Well, there are many reasons. One reason is that we don't care to go into an experimental field and take our chance to patent suits with the adding machine companies. We also wish to avoid the expense incidental to the manufacture of adding machines. We get the support of the adding machine company and salesmen rather than their non-support. Furthermore, any company as a rule which has employees enough to warrant the using of a paying machine of this type already owns an adding machine. They pay off once a week as a rule, and by attaching to the adding machine which they already own they are saved the expense incidental to buying a complete adding mechanism, which we might otherwise have to devise and build into the machine.

Q. In other words, a company to whom you might want to sell already owning an adding machine would not have to buy the complete outfit?

A. No.

Q. Now to what machines, Mr. Oviatt, can you—to what sorts of adding machines and kind of adding machines can the payograph be attached, and from which it can be detached?

A. We can attach to the Wales, Burroughs, White, made in New Haven, Connecticut, to the Universal; that is owned by the Burroughs. That

is practically all of the machines in the market having the ordinary type of keyboard.

Q. What is the fact as to whether or not the adding machines you have mentioned are the principal adding machines that there are being manufactured and sold in the United States?

A. There are only two principal adding machines, that is the Burroughs and the Wales, at the present time. The White in New Haven hasn't attained very much publicity.

Q. Now is it—this machine that you have demonstrated before the jury, this last machine, Mr. Oviatt that is in interference with the machine of the United States Cashier Company, known as the Bank Cashier?

Mr. Pipes: Now, may it please the court, that still raises the question.

Mr. Reames: I won't insist upon it until I present my point."

To the overruling of said objection the defendant Gernert was duly and regularly allowed an exception.

III.

That the Court erred in admitting in evidence over the objection of the defendant Gernert, as proof of the overt acts alleged in the indictment each and every of the letters set out in the indictment as overt acts numbers one to sixteen, inclusive:

Mr. Reames: I am now about to offer in evidence Government's Identification 115, which

forms the basis of overt act No. 1, a letter written by Mr. Bonnewell. I have a stipulation with Mr. McHenry to the effect that the letter was written by Mr. Bonnewell and mailed, and I want him here before I introduce it.

Mr. Maguire: Before the Government offers in evidence any evidence of overt acts, I would like at this time that the Court require the United States Attorney to declare whether he elects to prosecute these defendants for a violation of Section 37 of the Penal Code, or for a violation of Section 215 of the Penal Code. The indictment is drawn in such a general manner that there will be difficulty in determining whether it is a violation of Section 37, or a violation of Section 215, and in order that the defendants may preserve the record, it seems to me at this time we are entitled to know from the District Attorney upon which section he elects to proceed.

Mr. Reames: As stated in my opening statement to the jury and as stated in the indictment itself, this is an indictment for a violation of Section 37 of the Penal Code.

Mr. Maguire: Does the United States Attorney contend that the various overt acts set out in the indictment were the overt acts referring to, and in pursuance of the particular conspiracy set out in that indictment?

Mr. Reames: Yes.

Mr. Maguire: Refer to no other.

Mr. Reames: Yes, the ones attempted to be proven at this time.

Mr. Maguire: There have been offered and received numerous exhibits from Exhibit 120 to Exhibit 272, consisting of letters purporting to have been signed and mailed by the United States Cashier Company and by Mr. LeMonn as its sales agent, and Mr. Menefee as its president. Do I understand that it is the contention of the Government that these letters were written and mailed in the United States mail?

Mr. Reames: Yes.

Mr. Maguire: That is a matter of record now, so we may proceed and rely upon it?

Mr. Reames: Yes. The evidence of the Government has offered as to the manner in which these exhibits came into our possession, and the Government now claims it is proved by circumstantial evidence that these letters and various exhibits referred to by counsel were written and mailed in the United States mail in the ordinary course of business.

Mr. Maguire: And were mailed and relate to and refer to the particular conspiracy set out in the indictment?

Mr. Reames: Yes.

Mr. Maguire: And were in execution of that particular conspiracy?

Mr. Reames: I think so. The next is Government's Identification 212. That is the one identified by the witness Klein as having been received by him in New York City.

Mr. Pipes: No objection to the identification on our part.

Mr. Reames: Then may we have the admission that on July 23, 1912, Mr. Frank Menefee, either deposited or caused to be deposited this letter of date July 23, 1912, in the United States mails at Portland, Oregon, and at that time it was enclosed in an envelope, and had its postage fully prepaid?

Mr. Pipes: Yes.

Mr. Reames: The Government then offers in evidence letter of date July 23, 1912, Government's Identification 212, identified by the witness E. Klein when he was on the stand, as having been received by him at New York City, a few days after July 23, 1912, and the Government offers it as forming the basis of Overt act No. 2.

Mr. Maguire: On the part of the defendant Gernert objection is offered to this testimony on the ground that it is not an overt act for the purpose of executing the conspiracy set out in the indictment, for the reason that assuming the Government's contention to be true, and the allegations of the indictment to be true, the conspiracy, if any has been fully executed and terminated and performed, at least as early as June, 1911.

Now, may it please the Court, the defendants in this case are charged not with having devised a scheme to defraud, not with violation of Section 215 of the Penal Code, but with having conspired to commit an offense against the United States. The District Attorney has conceded that all the letters

which have been offered in evidence, and which he claims, and which of course for the purpose of this argument is admitted, went through the mails, were written and mailed for the purpose of executing the scheme to defraud, which he has set out and alleges to be true, in his indictment. Now, the gist of that offense is not in promoting of the scheme, but it is in the use of the mails to carry out an alleged scheme to defraud. The defendants are charged in this indictment with having conspired and confederated together to commit that particular offense; that is the offense of placing a letter in the mails for the purpose of executing the particular scheme to defraud set out in this indictment. Now, when that offense, that is, when the objects of the conspiracy have been consummated, there can be no further acts committed by any one, to be charged in the indictment or to be offered or admitted in the evidence, for the crime, if any, has been committed.

COURT: This indictment charges a continuing conspiracy.

Mr. Maguire: Quite so, Your Honor. And under the continuing conspiracy the statute of limitations does not commence to run from the first overt act, but from the last overt act, but it must be an overt act for the purpose of committing the particular offense set out in the indictment. Now, the particular offense set out in the indictment is the use of the mails for the purpose of defrauding, the mailing of a letter, rather, to carry out a scheme set

out in the indictment, and the District Attorney says that the scheme had been formed in September, and that these particular letters set out in 1911 and offered in 1911, were for the purpose of executing the scheme. Now, the conspiracy must have existed in the minds of the defendants prior to the devising of the scheme and when that offense was completed or committed, if any at all—of course, I merely assume that for the purpose of this argument, because it is in effect a demurrer to this evidence, and to the indictment—when that was completed, then there was nothing further to do. Now, let's take this state of facts, that counsel has put in here. He said that these defendants got together in September, 1910, for the purpose of devising and executing a scheme to defraud. Now, that offense was committed, and that conspiracy was consummated, at the time the first letter was placed in the mails for the purpose of executing the scheme. Now, any further acts, any further mailing of letters, were separate and distinct offenses. Any agreement or conspiracy was a separate and distinct conspiracy. Any agreement or conspiracy was a separate and distinct conspiracy, and cannot be joined in the same count of the indictment, and it is a question whether they are permissible to be charged in the same indictment, and unquestionably that cannot be done in the same count of the indictment. Therefore, under the District Attorney's own admission these particular letters did not refer to completing and committing an offense, if any offense at all was committed.

Argument of Counsel.

COURT: I understand your position, and I don't think it is necessary to take up any more time on it. I have ruled on that question a good many times, and as long as the indictment charges a continuing offense, as it does in this case, I think it is competent for the Government to give in evidence any act that may be selected by it as an overt act, providing it has charged a continuing conspiracy, and I don't think the first overt act terminates the conspiracy so the objection will be overruled.

MR. MAGUIRE: Save an exception.

MR. PIPES: That applies also to all the other defendants.

COURT: The same objection goes to all the defendants, and an exception.

Whereupon, the United States of America offered in evidence each and every letter set forth in the indictment as overt acts being therein numbered as overt acts I to XVI, to the admission of each of which for the reason hereinbefore set forth the defendant Gernert duly made objection, which objection was overruled by the Court. To the action of the Court in overruling said objection and in admitting said letters in evidence as proof of the overt acts set out in the indictment, the defendant Gernert was allowed an exception.

IV.

That the Court erred in refusing to grant defendant Gernert's motion to the Court to direct the jury to return a verdict of not guilty as to the defendant Gernert, for the reason that the indictment does not state facts sufficient to constitute crime.

V.

That the Court erred in overruling and denying the defendant Gernert's motion to the Court to direct the jury to return a verdict of not guilty as to Defendant Gernert, for the reason that the indictment charges more than one crime.

VI.

That the Court erred in denying and overruling the defendant Gernert's motion to the Court to direct jury to return a verdict of not guilty as to the defendant Gernert for the reason that there is no evidence tending to show formation of any conspiracy described in the indictment.

VII.

That the Court erred in overruling and denying the defendant Gernert's motion to the Court to direct the jury to return a verdict of not guilty as to the defendant Gernert for the reason that the evidence does not show any confederation, agreement or conspiracy on the part of the defendant Gernert with the defendants named in the indictment.

VIII.

That the Court erred in overruling and denying the defendant Gernert's motion to the Court to direct the jury to return a verdict of not guilty as to defendant Gernert for the reason that the evidence showed that the conspiracy, if any, was terminated and completed more than three years prior to the finding of the indictment.

IX.

That the Court erred in overruling and denying the defendant Gernert's motion to the Court to direct the jury to return a verdict of not guilty as to the defendant Gernert for the reason that upon the face of the record it appears that none of the overt acts which appear in the indictment were committed prior to the termination of the conspiracy and effectuating its said object.

X.

That the Court erred in overruling and denying the defendant Gernert's motion to the Court to direct the jury to return a verdict of not guilty as to the defendant Gernert for the reason that it appeared from the face of the record that the defendant Gernert was not associated with the conspirators named in the indictment nor employed by the United States Cashier Company within three years of the finding of the indictment.

XI.

That the court erred in denying and refusing to give the following instruction #3 requested by the defendant O. E. Gernert:

“Again, even though you should find from the evidence that fraud or injury resulted from the acts of one or more of the defendants and was brought about or executed in whole or in part by use of the mails, yet, if you would not find that there was an agreement or understanding between the defendants and all of them to devise such a scheme and to execute it in the manner hereinbefore alleged, then you must find the defendants not guilty.”

The defendant then and there duly and regularly excepted to the action of the Court in refusing to give said requested instruction.

XII.

That the Court erred in denying and refusing to give the following instruction #4 requested by the defendant O. E. Gernert:

“Gentlemen of the Jury: You are further instructed that it is not sufficient for the government in this case to show that certain of the defendants combined to perform certain acts and some one or more combined with others to perform different acts, even though the defendants had a similar purpose in view, but the evidence in this case must show beyond a reasonable doubt that each and all of the defendants agreed and conspired together to do these things.”

The defendant then and there duly and regularly excepted to the action of the court in refusing to give said requested instruction.

XIII.

That the Court erred in denying and refusing to give the following instruction #6 requested by the defendant Gernert:

“The existence of a conspiracy cannot be established as to one of the defendants by the acts or declarations of another defendant committed in his absence and without his knowledge or concurrence, nor can the connection of a particular defendant to a conspiracy be established or proved by what is said or done by another person alleged to be a co-spirator. Therefore, in determining whether or not there was a conspiracy and whether or not any particular person was a party to such conspiracy you are limited to the things done by him, and unless you find beyond a reasonable doubt from his debts that he had an intent to defraud and that he had knowledge that the Company did not have, own or control the patents which it claimed to have and that he knew the Company did not intend to manufacture such machines (if you find from the evidence it was not their intention so to do) and that he knew that the Company did not have bona fide orders for its machines and that he knew that the Company would not make large profits and that he knew that the financial condition of the Company was not excellent but was insolvent and that the liabilities of the corporation greatly exceeded its assets and that he knew that the stock by reason of these things was worthless.

In other words the government has alleged in the indictment that the stock in this corporation was worthless by reason of certain alleged facts and conditions which it sets out in detail, and before you can find any particular defendant guilty under this indictment it will be necessary for you to find beyond a reasonable doubt that such defendant knew that the stock of the Company was worthless because of the particular matters which the government charges.

The defendant then and there duly and regularly excepted to the action of the Court in refusing to give said requested instruction.

XIV.

That the Court erred in denying and refusing to give the following instruction #7 requested by the defendant O. E. Gernert:

“The mere fact that any one of the defendants may have made statements which were false or misleading in order to induce others to purchase stock in this corporation, would not of itself justify you in finding him guilty of the crime of conspiracy as charged in this indictment unless you further find that the defendant made such statements knowing that the stock he was offering for sale was worthless.

The defendant then and there duly and regularly excepted to the action of the court in refusing to give said requested instruction.

XV.

That the Court erred in denying and refusing to give the following instruction #8 requested by the defendant:

The mere assertion by a salesman that certain stock offered for sale was Company stock instead of personal stock would not justify you in finding such salesman guilty of the crime charged in this indictment. There is no difference between Company stock and personal stock, it is all stock in the United States Cashier Company, and if such salesman at the time of making such representations did not know or have knowledge of the matters which the government alleges rendered said stock worthless, but believed said stock to be valuable, then no presumption of fraudulent intent would arise and said defendant would not be guilty of the crime charged and you should find such defendant not guilty.

The defendant then and there duly and regularly excepted to the action of the Court in refusing to give said requested instruction.

XVI.

That the Court erred in denying and refusing to give the following instruction #10 requested by the defendant Gernert:

You are further instructed that so far as the stock salesmen were concerned they were and are not officers of the Company and they stood in no

fiducial relation toward its stockholders or toward such persons as it might be their duty in the course of their employment to endeavor to induce to purchase stock of the Company, and such salesmen had the right to freely contract with the Company and had the right to obtain the best contract they could for themselves without being guilty of fraud or wrong doing, and the mere fact, if you shall find it to be a fact, that they received a large commission, is not of itself any evidence of fraud or wrong doing on their part. They had a right to place whatever value they might desire upon their services and to obtain and make the best bargain they could with their prospective employers. The business of selling stock in a corporation or obtaining subscriptions to the same is a legitimate business and there is no presumption or suspicion of any kind against a man who engages in such business.

Exaggeration or puffing of the value of an article or enterprise does not constitute a crime and is not criminal or fraudulent unless the person making such statements intends thereby to defraud the purchaser.

The defendant then and there duly and regularly excepted to the action of the court in refusing to give said requested instruction.

XVII.

That the Court erred in denying and refusing to give the following instruction X-A requested by the defendant Gernert:

There is no presumption from the fact that a statement is false that it was made with a fraudulent intent.

Southern Devp. Co. v. Silva, 125 U. S. 248.

The defendant then and there duly and regularly excepted to the action of the court in refusing to give said requested instruction.

XVIII.

The Court erred in denying and refusing to give the following instruction #XI requested by the defendant Gernert:

It is incumbent upon the government to show, that the representations or statements made by any one of the defendants were not only untrue but that the defendant knew them to be untrue, and in addition to those two elements intended thereby to injure and defraud.

The defendant then and there duly and regularly excepted to the action of the court in refusing to give said requested instruction.

XIX.

The Court erred in denying and refusing to give the following instruction #XII requested by the defendant Gernert:

There is no presumption of fraud from the fact that a glittering and glowing promise may have been made and not carried out, unless it shall ap-

pear that the person who made such promise knew at the time of making the same that it could not be carried out and would not be carried out.

The defendant then and there duly and regularly excepted to the action of the court in refusing to give said requested instruction.

XX.

That the Court erred in charging the jury as follows:

The indictment charges that the alleged fraudulent scheme was to be carried out and executed by certain specific false representations. It is not incumbent upon the government to prove that all of the means set out in the indictment were in fact agreed upon to carry out the alleged conspiracy, or that any of them were actually used or put into operation. It is sufficient if it be shown to your satisfaction, beyond a reasonable doubt, that the conspiracy was entered into for the purposes indicated, and that one or more of the means described in the indictment were to be used to execute it, and that, during the continuance of the conspiracy, the alleged overt acts, or some one or more of them, stated in the indictment were done by one or more of the conspirators to effect the object thereof.

The defendant duly excepted to the act of the Court in giving the above instruction to the jury, which said exception was allowed by the Court.

XXI.

That the Court erred in charging the jury as follows:

In order for one person to defraud another, it is not necessary that he should bear any malice or ill-will toward such person. If the defendants in this case agree together that they were to sell the shares of stock in this corporation upon and on account of false and fraudulent representations, which they would make knowing these representations would be false and untrue, and knowing that they would be made for the purpose of deceiving the investors and the public as to the true condition and value of the shares of stock, then the law would imply that they intended to defraud all of the persons who should buy shares of stock from them, or from the Cashier Company, relying upon such representations.

The defendant duly excepted to the act of the Court in giving the above instruction to the jury, which said exception was allowed by the Court.

XXII.

The Court erred in charging the jury as follows:

It has been truly said in argument that one of the cardinal points in this case is the intent of the defendants. But what intent? Was it their intent that they could make the business of the United States Cashier Company? Was it their belief that

they could make the enterprise of the United States Cashier Company successful? The answer to these questions would necessarily be No. If they agreed to make false and fraudulent pretenses, representations or promises, if they agreed to make false and fraudulent representations and assurances, for the purpose of deceiving the investors and the public in respect to the true condition of affairs of the corporation, or the value of its stock, then the ultimate intent to make the business of the corporation a success, or the ultimate belief of the defendants that they would finally make it a success, would by no means furnish any condonation or legal excuse for the false and fraudulent representations, which they would under the circumstances agree to make in order to induce the investors and the public to pay over their money.

The defendant duly excepted to the act of the Court in giving the above instruction to the jury, which said exception was allowed by the Court.

XXIII.

That the court erred in charging the jury as follows:

In considering this question, the question of and concerning the intent to defraud, you must direct your attention to the intent presented by the particular transaction set out in the indictment. If these defendants agreed that they would put forth the false representations or promises alleged, for the purpose of deceiving and misleading investors

and the public into paying over their money, then it matters not how confident they may have been that they would be able to make the business of the corporation a success, or how confident they may have been that they would be able to return that money without loss, or without profit, because the representation which they would have agreed to make would be for the purpose of getting the money in a wrongful way and they could not, under such circumstances make them rightful by pointing to some ultimate good intent.

The defendant duly excepted to the act of the court in giving the above instruction to the jury, which said exception is allowed by the court.

XXIV.

That the Court erred in charging the jury as follows:

The parallel between such a case as I have presented and the crime of embezzlement is very close. It is a well known fact that nearly every man who embezzles money expects that he will be able to pay it back without loss; but his taking is wrongful and his intent to pay it back without loss cannot cancel the wrong. So in this case if the defendant by means of the false and fraudulent representations set out in the indictment agreed to mislead investors and the public generally into paying over to them or to the Cashier Company their money and their property, then their belief that they could ulti-

mately return that money without loss and with profit would not condone the wrong in getting the money by deception.

The defendant duly excepted to the act of the Court in giving the above instruction to the jury, which said exception was allowed by the Court.

XXV.

That the Court erred in charging the jury as follows:

The law presumes that every man intends the logical and natural consequences of his own wrongful acts. Applying this rule to the case at bar, if you believe from the evidence, and beyond a reasonable doubt, that these defendants agreed among themselves that they would sell to the public and to these investors the shares of stock of the United States Cashier Company, under the false and fraudulent representations set out in the indictment, or some of them, then you would be justified in finding that the defendants agreed to defraud the investors and the public, notwithstanding the fact that you also might believe that the defendant really believed that the value of the stock would be ultimately such as to return to the investors a profit instead of a loss.

The defendant duly excepted to the act of the Court in giving the above instruction to the jury, which said instruction was allowed by the court.

XXVI.

That the court erred in charging the jury as follows:

It is not necessary in this case in order to convict one or more of the defendants that you should be satisfied that each of the defendants knew or understood all of the fraudulent representations, promises or pretenses that were to be made, if any were to be made, if one of the defendants at any time prior to the period of three years from the date of filing the indictment and prior to the time when any overt act set out in the indictment was committed agreed with another of said defendants that they would act jointly in carrying out the alleged fraudulent scheme set out in the indictment, and in selling the stock of the corporation representing that the money to be received from such sale was to go into the treasury of the company to be used by it in building factories, knowing that the shares of stock, which were to be offered for sale, were in truth and in fact the privately owned stock of another of the defendants and that none of the money would go into the treasury of the company, and you further believe from the evidence that some of the false and fraudulent pretences and promises set out in the indictment were to be used by the defendant for the purpose of inducing the investors to purchase such shares of stock, then you would be justified in finding that such persons so agreeing to sell their stock in such manner and under such false representations, were parties to the conspiracy.

The defendant duly excepted to the act of the Court in giving the above instruction to the jury, which said exception was allowed by the Court.

XXVII.

That the Court erred in charging the jury as follows:

If you believe from the evidence that the original purpose of the defendants was legitimate, and you further believe from the evidence that they believed in the future of the United States Cashier Company and believed that it would ultimately pay dividends to the investors, and you believe from the evidence and beyond a reasonable doubt that they deliberately agreed together to take advantage of the public interests between a meritorious invention in order to sell to the public shares of stock by the false and fraudulent representations set out in the indictment, if they were false, then you would be justified in finding that the defendants intended to defraud the persons to whom they should sell such stock.

The defendant duly excepted to the act of the Court in giving the above instruction to the jury, which said instruction was allowed by the Court.

XXVIII.

That the court erred in charging the jury as follows:

In determining whether or not the defendants intended to defraud the investors of the money by

selling to them the shares of stock of the corporation, you have a right to take into consideration the question of the commissions which the evidence shows, or tends to show were received by the defendant or any of them, from the proceeds of the sale of this stock.

The defendant duly excepted to the act of the Court in giving the above instruction to the jury, which said instruction was allowed by the Court.

XXIX.

That the court erred in charging the jury as follows:

Now, the intent to form a scheme or artifice to defraud is an act of the mind which necessarily involves an intention to defraud. The purpose to devise such a scheme and the evidence of such intent may be shown by the acts and declarations of the parties and by attending circumstances, as well as by direct evidence. Whether such an intent has been proved in this case is a question of fact for your determination. Experience shows that positive proof of fraudulent acts is not generally to be expected, and for that reason, among other things, the law permits a resort to circumstances as a means of ascertaining the truth, and in such case great latitude is allowed by the law to the acceptance of direct or circumstantial evidence, the aid of which is constantly required not merely for the purpose of remedying the want of direct evidence, but also to supply protection against im-

position. Whenever the necessity arises for a resort to circumstantial evidence, either from the nature of the inquiry or the failure of direct proof, great latitude is allowed in its admission, for the reason that the force and effect of circumstantial facts usually and almost necessarily depend upon their connection with each other. Circumstances altogether inconclusive, if separately considered may, by their number and joint operation establish or corroborated by minor circumstances be sufficient to constitute conclusive proof. And where fraud in the purchase or sale of property is in issue evidence of fraud of like character committed by the same parties at or near the same time, is admissible, on the ground that where transactions of a similar character executed by the same parties are closely connected in point of time, the inference is reasonable that they proceed from the same motive.

The defendant duly excepted to the act of the court in giving the above instruction to the jury, which said exception was allowed by the Court.

XXX.

That the court erred in charging the jury as follows:

The indictment charges that the conspiracy was formed in September, 1910. The date is not material. It is sufficient if it was formed sometime prior to the overt acts charged in the indictment and continued and in existence at the time of such acts.

The defendant duly excepted to the act of the court in giving the above instruction to the jury, which said exception was allowed by the Court.

WHEREAS, by the law of the land, said judgment ought to be given for said defendant O. E. Gernert, plaintiff in error herein, and against the plaintiff United States of America, defendant in error herein, said defendant O. E. Gernert does now pray that the judgment herein rendered against him be reversed and annulled and altogether held for nothing, and the sentence herein imposed upon him be set aside and held for naught, and that he be restored to all things which he has lost by occasion of the said judgment; that the said District Court be directed to sustain defendant's demurrer to said indictment, or to grant a new trial of said cause; and that defendant be afforded such and any and all other relief as may be meet in the premises.

Dated this 29th day of March, A. D. 1916.

ROBERT F. MAGUIRE,

of Attorneys for said Defendant O. E. Gernert.

State of Oregon,
County of Multnomah,—ss.

Due service of the within Petition for Writ of Error and Assignment of Errors is hereby accepted in Multnomah County, Oregon, this 29th day of March, 1916, by receiving a copy thereof, duly certified to as such, by Robert F. Maguire, one of attorneys for O. E. Gernert.

Clarence L. Reames,
United States Attorney.

Filed March 29, 1916.

G. H. Marsh, Clerk.

And afterwards, to-wit, on Wednesday, the 29th day of March, 1916, the same being the 21st judicial day of the regular March, 1916 term of said Court; Present: the Honorable Robert S. Bean, United States District Judge presiding, the following proceedings were had in said cause, to-wit:

ORDER ALLOWING WRIT OF ERROR.

O. E. Gernert, the defendant in the above entitled cause, having filed herein and presented to the Court his petition praying for the allowance of a Writ of Error from the United States Circuit Court of Appeals for the Ninth Circuit to the above-entitled court, and having submitted therewith the Assignment of Errors intended to be urged by him; praying also that a transcript of the record, proceedings and papers in this cause, duly authenticated, be sent to said United States Circuit Court of Appeals for the Ninth Circuit, and praying also that meanwhile all further proceedings in the above-entitled District Court be suspended, stayed and superseded, and that sentence and execution herein be stayed until the final disposition of said Writ of Error in the aforesaid United States Circuit Court of Appeals;

IT IS HEREBY ORDERED that the aforesaid Writ of Error be, and the same is, hereby allowed; and

IT IS FURTHER ORDERED that a transcript of the record, proceedings, and papers in this cause, duly authenticated, be sent to the aforesaid United States Circuit Court of Appeals for the Ninth Circuit; and

IT IS FURTHER ORDERED that all further proceedings in this above-entitled District Court be suspended, stayed, and superseded until the final disposition of said Writ of Error in the aforesaid United States Circuit Court of Appeals for the Ninth Circuit upon filing an undertaking in the sum of \$2500 to be approved by clerk.

IT IS FURTHER ORDERED that upon filing of said bond, sentence and execution herein be stayed until the final disposition of said Writ of Error in the aforesaid United States Circuit Court of Appeals for the Ninth Circuit.

Dated March 29, 1916.

R. S. Bean,
United States District Judge.

Filed March 29, 1916.

G. H. Marsh, Clerk.

And afterwards, to-wit, on the 4th day of April, 1916, there was duly filed in said Court, a Bond for Costs on Writ of Error in words and figures as follows, to-wit:

BOND FOR COSTS ON WRIT OF ERROR TO
THE DISTRICT COURT OF THE
UNITED STATES FOR THE
DISTRICT OF OREGON.

KNOW ALL MEN BY THESE PRESENTS, That we, O. E. Gernert, as principal, and the Massachusetts Bonding and Insurance Company, as surety, are held and firmly bound unto the United States of America in the full and just sum of One Hundred Dollars, to be paid to the said United States of America, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 3d day of April, in the year of our Lord, one thousand nine hundred and sixteen.

WHEREAS, lately at a District Court of the United States for the District of Oregon, in a suit depending in said Court, between the United States of America, plaintiff, and O. E. Gernert, defendant, a judgment and sentence were rendered against the said O. E. Gernert, and the said O. E. Gernert having obtained from said Court a writ or error to reverse the said judgment and sentence against him in the afore-said cause, and a citation directed to the said United

States of America, citing and admonishing it to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at San Francisco, in the State of California, within thirty (30) days from and after the day of said citation, which citation has been duly served:

NOW the condition of the above obligation is such that if the said O. E. Gernert shall prosecute said Writ of Error of effect, and answer all costs involved therein, then the above obligation to be void; else to remain in full force and virtue.

O. E. Gernert, (Seal)

By Robert F. Maguire, his Attorney.

(Seal)

Massachusetts Bonding and Insurance Company,

By its Attorney in Fact, Frank E. Smith.

Signed, sealed, taken, and acknowledged before me this 3rd day of April, 1916.

My commission expires April 17th, 1917.

Louis R. Centro,

(Seal)

Notary Public for Oregon.

United States Commissioner,

District of Oregon.

Form of bond and sufficiency of surety approved this 4th day of April, 1916.

Charles E. Wolverton,

United States District Judge.

Filed April 4, 1916.

G. H. Marsh, Clerk.

And afterwards, to-wit, on the 13th day of April, 1916, there was duly filed in said Court and cause a Praecipe for Transcript in words and figures as follows, to-wit:

PRAECIPE FOR TRANSCRIPT.

G. H. Marsh,
Clerk of said Court,
City.

Dear Sir:

You will please prepare a transcript on appeal in the above entitled cause for the defendant O. E. Gernert, and make a part of said transcript as follows:

1. Indictment.
2. Bill of Exceptions.

Also the Journal entries as follows:

1. Plea of not guilty.
2. Return of verdict and verdict.
3. Sentence.
4. Citation on Writ of Error.
5. Writ of Error.
6. Order allowing Writ of Error.
7. Petition for Writ of Error.
8. Assignment of Errors.
9. Bonds for costs.

Praecipe for Transcript.

Yours truly,

Robert F. Maguire,

Attorney for Defendant O. E. Gernert.

Filed April 13, 1916.

G. H. Marsh, Clerk.

UNITED STATES OF AMERICA,)
) ss.
District of Oregon,)

I, G. H. MARSH, Clerk of the District Court of the United States, for the District of Oregon, do hereby certify that I have prepared the foregoing transcript of record on writ of error in the case in which the United States of America is plaintiff and defendant in error, and O. E. Gernert is defendant and plaintiff in error, in accordance with the law and the rules of court and in accordance with the praecipe of said plaintiff in error, and that the said transcript is a full, true, and correct transcript of the record and proceedings had in said court in said cause in accordance with the said praecipe as the same appear of record and on file at my office and in my custody.

And I further certify that the cost of the foregoing transcript of record is \$. for printing said transcript, and that the same has been paid by said plaintiff in error.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at Portland, in said district, this day of April, 1916.

Clerk.

